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In The

Supreme Court of the United States

October Term, 1993

NORDELL INTERNATIONAL RESOURCES, LTD.,

Petitioner,

v.

TRITON INDONESIA, INC., TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LIMITED,

Respondents.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented by this petition for certiorari are:

1. Can an arbitration panel make an award which ignores confessions of fraud and other illegalities made on the record and affirm an arbitration award based on such conduct even though such illegal conduct violates specifically articulated public policies against fraud and corruption?

2. Can an arbitration panel make an award which provides affirmative relief to a party who on the record admits it committed fraud and other illegal conduct and thereby completely disregard the unclean hands doctrine which prohibits a party from benefitting from its own wrongful conduct?

PARTIES AND RULE 29.1 STATEMENT

All parties to this proceeding appear on the caption of this Petition.

Pursuant to Supreme Court Rule 29.1, the Petitioner submits the following information:

Nordell International Resources, Ltd. is a wholly owned subsidiary of Veronex Resources, Ltd., now known as International Veronex Resources, Ltd. ("Veronex").

Triton Energy Corporation owns 100% of Triton Indonesia, Inc. and Triton Energy Corporation owns 63.7% of New Zealand Petroleum Co., Ltd., successor-in-interest to Triton Oil (NZ) Limited.

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PETITION FOR WRIT OF CERTIORARI

Petitioner NORDELL INTERNATIONAL RESOURCES, LTD. ("Nordell") respectfully requests that a writ of certiorari be issued to review the judgment and decision of the Court of Appeals for the Ninth Circuit filed on July 23, 1993.

OPINION BELOW

The Opinion of the Ninth Circuit is a non-published memorandum decision. It is reprinted at Appendix A, APP-1.[1]

JURISDICTIONAL STATEMENT

The Court of Appeals for the Ninth Circuit entered its judgment on July 23, 1993. The Ninth Circuit denied Nordell's timely petition for rehearing and suggestion for rehearing *en banc* on September 21, 1993. A copy of that Order is reprinted at Appendix E. This Petition is timely filed within ninety (90) days of that Order. Jurisdiction of this Court is premised on 28 U.S.C. § 1254(1) and 9 U.S.C. §§ 16(a)(1)(D)-(E), 16(a)(3).

STATUTORY PROVISION INVOLVED

Section 10 of the Arbitration Act (9 U.S.C. § 10(a)(4)) provides in pertinent part:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration –

[1] References to documents included in the Appendix hereinafter will be referred to as "Appendix ___" and specific page references will be cited as "APP-___."

* * *

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

* * *

STATEMENT OF THE CASE

A. Summary Overview

Petitioner Nordell entered into a Farmout Agreement and Joint Operating Agreement ("JOA")[2] in October 1988 with Respondent Triton Indonesia, Inc. ("TII") for the joint operation and development of a large producing oil field in Indonesia known as the Enim Field. (ER 114, Exhs. A and B.)[3] Respondent Triton Energy Corporation ("Triton") was TII's parent and guaranteed TII's obligations under the Farmout Agreement and the JOA.

In January 1990, Nordell filed for arbitration with TII, Triton and Triton Oil New Zealand Limited ("TONZ") regarding Nordell's claims that TII, Triton and TONZ (sometimes hereinafter referred to collectively as "the Triton Companies") breached their obligations under the Agreements regarding the issuance of cash calls against

---

[2] The Farmout Agreement and the JOA will sometimes hereinafter be referred to collectively as "the Agreements."

[3] *Citations to Record below not included in Appendix*: "CR" refers to items on the District Court's Docket Sheet which were not included in the Excerpts of Record filed with the Court of Appeal. "ER" refers to items included in the Excerpts and corresponds to item numbers on the District Court's Docket Sheet.

Nordell for the operation of the Enim Field.[4] (ER 115, Exh. T at 18-26.) The arbitration panel presided over the arbitration in October 1990 and issued an award adverse to Nordell in December 1990. (Appendix B, APP-25-30.)

The arbitration panel's award divested Nordell of its $32 million investment in the Enim Field which accumulated over a six year period. The award also ordered Nordell to pay TII approximately $1.0 million for cash calls and damages Nordell allegedly owed the Triton Companies. (Appendix B, APP-27-28.) The arbitration panel also ignored evidence which indicated that TII's accounting methods for the Enim Field joint venture were riddled with fraud and suffered from a complete lack of internal accounting controls. (Appendix B.) Despite unrefuted evidence Nordell presented at the arbitration proceedings of fraudulent accounting practices, violations of the Foreign Corrupt Practices Act and federal securities laws, the panel issued its award based on figures which had their origin in Triton's fraudulent accounting records and clearly illegal conduct.

B. Factual Overview: The Nature Of The Business Dispute Between Nordell And Triton

Effective October 1, 1988, Nordell entered into a contract with TII, the newly created wholly owned subsidiary of Triton. The contract consisted of two integrally related agreements – the Farmout Agreement and the

---

[4] Both Nordell and TII were required to make certain cash contributions, known under the Agreements as "cash calls," toward the ongoing operation of the Enim Field.

JOA. Triton guaranteed TII's performance on the Agreements. *Id.*

Pursuant to the Agreements, TII was to have infused substantial new capital into the Enim Field Project (sometimes hereinafter referred to as the "Project"), an oil production field located on the island of Sumatra in Indonesia. TII was obligated in the first instance to invest a total of $24 million in cash: $21 million into the Enim Field Project directly and a $3 million payment to Nordell. TII became the operator of the Project with full responsibility for the technical, operational, managerial, financial and accounting aspects of the Project after Triton obtained approval in late November 1988 of Pertamina, the state-owned oil company of Indonesia. (ER 114, Exhs. A and B.)

During the period that TII was making its initial cash investment in the Enim Field Project of $21 million, Nordell was not required to contribute to the costs of the Project. Once TII had completed making its initial cash investment into the Project, TII was to pay 60% and Nordell was to pay 40% of all the future costs of the Project. Revenues were also to be allocated between Nordell and TII on the basis of their respective participating interests. (ER 114, Exh. A, Article 8 at 33-35, Article 10 at 35-36.)

In both the Farmout Agreement and the JOA, the obligation of TII to pay 60% and of Nordell to pay 40% of all the costs and expenses of the Project was explicitly stated in Paragraph 7.4 of the Farmout Agreement and Paragraph 2(c) of the Accounting Procedure Annex to the JOA. (Exh. 114, Exh. A at 33; Exh. B at 87.)

During 1989, Nordell disputed several accounting practices of TII, complaining that the effect of these accounting practices was to credit TII with satisfying its requirement to make the initial cash investment of $21 million in the Project *before* TII had actually contributed that amount in cash. (CR 114.)

On November 24, 1989, TII declared that it had made its required initial cash investment of $21 million in the Project. (CR 6, Exh. I.) TII then made its first demand on Nordell for an additional cash contribution to cover Project expenses. Nordell paid under protest and, on January 30, 1990, demanded arbitration with Triton. (CR 114 ¶¶ 16-19; ER 115, Exh. T at 18-26.)

The evidence at the arbitration focused on the issue of "cash calls" and which party owed money to the other on the cash calls. The arbitration panel concluded that Nordell owed Triton money on the cash calls.

C. Factual Overview: The Nature Of Triton's Fraudulent And Illegal Conduct

In the course of the actual testimony received during the arbitration proceedings, the panel heard testimony from various Triton and TII employees about TII's fraudulent accounting practices. This testimony came from Triton and TII employees or ex-employees involved in internal audit and financial reporting, including high level financial reporting executives Michael Calloway and Richard Poulton. Another TII financial reporting officer, R.P. Murphy, also testified about fraudulent accounting practices. Other TII employees who participated in

fraudulent accounting practices were J.B. McDonough and R.L. McAdoo.

These fraudulent accounting practices were outlined in detail in a report Calloway did on an internal audit review dated September 25, 1989 (the "Calloway Report"), which Calloway completed in September 1989, one year before the arbitration began in early October 1990. (Appendix F.) The Calloway Report surfaced during the arbitration. Calloway was from Triton's headquarters in Dallas, Texas and had been dispatched to the Enim Field Project in Indonesia for an accounting review.

The Calloway Report revealed that TII was routinely paying bribes in Indonesia. (Appendix F, APP-44.) More significantly, the Calloway Report revealed that TII had paid Indonesian government auditors $200,000 to reduce the audit "exceptions" for the Project. *Id.* Calloway also wrote in his report that the accounting back-up functions at TII are so inadequately documented that "it is very difficult, perhaps impossible, to tell a real transaction from one that has been faked for cost recovery purposes." *Id.* The Calloway Report also stated that other U.S. oil companies, such as ARCO, had also paid bribes in Indonesia resulting in internal audit control problems. (Appendix F, APP-45.)

Calloway in turn testified during the arbitration that such bribes had in fact been paid by Triton to get the Indonesian government auditors to alter their audit report of the Project. (Appendix G, APP-54.) Calloway testified that TII in Indonesia prepared fraudulent invoices and included them to "pad" the cash calls on Nordell as items which were cost recoverable. (Appendix

G, APP-56-57.) "Cost recoverable" items were expenses that TII could charge to Nordell's cash call obligation, and in this manner Triton "padded" cash obligations to Nordell thereby accelerating Triton's ability to begin the "cash call" period and reducing Triton's own cash obligations.

The pragmatic effect on Nordell of Triton's illegal and fraudulent accounting practices was to: (1) greatly reduce Triton's cash obligations; (2) greatly increase Nordell's cash obligations; (3) substantially reduce the time period for which Triton had to pay its 100% cash obligation for the Project expenses; and (4) substantially accelerate the time period for which Nordell became obligated to pay its 40% share of the Project expenses. Absolutely none of these effects that resulted from Triton's illegal and corrupt activities was of any benefit whatsoever to Nordell.

As a further part of such fraudulent accounting practices, TII created an "inventory in transit" account. Internal auditor Poulton testified about this account. (Appendix H, APP-85-93.) The account was for inventory that TII allegedly purchased for the Project, but the equipment never actually reached the Project. However, TII was booking the alleged purchase cost to the Nordell/TII joint cost recovery account in direct violation of the JOA which required the cash method of accounting, not the accrual method.

When Poulton raised concerns to TII about this "inventory in transit" account, he was told not to worry

because TII in Indonesia could "buy the audit." (Appendix H, APP-93-94.) Poulton resigned because he recognized the criminal nature of these transactions. (Appendix H, APP-93-95.) Poulton, in connection with his resignation, filed a statement with the American Embassy in Indonesia in order to protect his professional reputation as an accountant.

Triton asked Poulton to sign a letter regarding his audits in connection with his resignation. (ER 29 at 702.) Poulton refused to sign TII's resignation statement and testified as follows:

> When the letter [from TII] was provided to me on 2 May, you know, considering that I had viewed that there were potentially illegal transactions, there were the elements of what I viewed as possibly a fraudulent treatment of an area where I had worked, I had serious reservations about signing any sort of a representation for Triton.

Id.

Project comptroller Murphy also had a concern about potential criminal exposure in his financial reporting work at TII. (ER 29 at 541-42.) Murphy also cited several accounting "errors" which had worked in Triton's favor and against Nordell. (ER 29 at 610-11.) Also, Nordell's own internal auditor, Paul Maupin, was not allowed access by Triton to financial and accounting records while he was in Indonesia attempting to conduct an audit. (ER 29 at 872-75, 898-99.)

Finally, Triton's accounting fraud was actually proven in court in Texas in a wrongful termination case

brought by Triton's former chief accounting officer, Jimmy Janacek. (Request for Judicial Notice, Exh. 1.)[5] The jury's special verdict form indicates that Triton terminated Janacek because he refused to sign a 10-K disclosure statement which contained material misrepresentations and omissions concerning Triton's financial affairs and because he refused to participate in circumventing internal company audit controls. The jury returned its verdict in favor of Janacek in June 1992 and awarded $124 million in damages against Triton.

D. The Proceedings Below

On January 30, 1990, Nordell filed a demand for arbitration against the Triton Companies. (ER 115, Exh. T at 18-26.) On April 9, 1990, the Triton Companies filed a counterclaim demand against Nordell for arbitration. (ER 115, Exh. U at 27-31.)

In October 1990, the arbitrators conducted the arbitration hearings in Singapore and Los Angeles, California. On December 13, 1990, the arbitrators issued their award. On December 26, 1990, Nordell filed its motion in the District Court to vacate the award. On January 18, 1991, the Triton Companies filed its motion in the District Court to affirm the arbitrators' award against Nordell.

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[5] Nordell filed a request for judicial notice with the Court of Appeals requesting the court to take judicial notice of the complaint in Janacek's wrongful termination lawsuit against Triton and the jury's special verdict form wherein the jury found in favor of Janacek and awarded him $124 million in damages against Triton.

On February 6, 1991, the District Court issued its order staying the award and remanding the matter back to the arbitrators for clarification and further hearings. (Appendix D.) On June 18, and July 12, 1991, the arbitrators conducted further proceedings and hearings in Los Angeles.

On August 30, 1991, the arbitrators issued an order confirming and clarifying their original award. (Appendix B, attached Exh., APP-31-33.) On September 9, 1991, Nordell filed an application for correction. On September 30, 1991, the application was rejected by the arbitrators. (ER 115, Exh. GG at 76.) On November 25, 1991, the District Court issued an order confirming the arbitrators' award. (Appendix C.) On February 25, 1992, the District Court entered final judgment on the arbitrators' award. (Appendix B.)

On March 27, 1992, Nordell filed a timely notice of appeal. (ER 185; ER 186.) On July 23, 1993, the Court of Appeals affirmed the award as to Nordell, but reversed the award as to Nordell's parent company, Veronex. (Appendix A.) On September 21, 1993, the Court of Appeals denied Nordell's Request for a Rehearing. (Appendix E.)

E. The Opinion Of The Ninth Circuit

The Opinion discusses the fraud issue in a blithe fashion, completely disregarding Triton's outright confession of accounting fraud and violations of the Foreign Corrupt Practices Act. (Appendix A, APP-9.) The Opinion mischaracterizes the nature of the factual dispute on this

issue. *Id.* Triton actually admitted the fraud, but argued that the fraud and foreign bribes were not pervasive enough to be "significant." Alternatively, Triton argued that even if Triton's accounting fraud and payment of bribes was widespread, Nordell, as a joint venturer in the Project, directly benefitted from the fraudulent accounting methods and illegal bribes Triton was paying to Indonesian officials and hence had no standing to object to it.

The Opinion incorrectly focuses on the concept of an alleged factual dispute regarding the fraudulent financial data and violations of the Foreign Corrupt Practices Act. In reality, all Nordell was doing was asking the Court of Appeals to recognize and address the accounting fraud and violations of the Foreign Corrupt Practices Act which were admitted by Triton's employees or ex-employees. It is not a matter of changing these factual findings but rather giving the proper legal import to Triton's admitted violations of the law.

Triton cannot change these admissions by offering evidence from other employees that the financial data was otherwise reliable; to do so would allow the admitted wrongdoer, Triton, to escape any consequences for its actions. Such a circumstance is the precise reason for the existence of the "unclean hands" doctrine. The Opinion conveniently and completely sidesteps the "unclean hands" issue by claiming that it became irrelevant because the arbitrators allegedly made an implicit factual finding that no accounting fraud or illegal foreign bribes occurred. (Appendix A, APP-11.)

The proper issue is the appropriate legal consequences of Triton's admissions of illegal conduct directly

related to the issue central to the arbitration: the financial status of the Enim Field Oil Project. These admissions evidence illegal conduct which is directly contrary to specific public policies making foreign bribes illegal (the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 and 78dd-2), making fraud illegal (Cal. Civ. Code §§ 1572, 1573, 1709 and 1710), and making securities fraud illegal (15 U.S.C. §§ 77k and 78j(b)). In short, the Opinion begs the question and ducks the issue. This Court should grant this Petition to correct these errors.

REASONS FOR GRANTING THE WRIT

The reasons for granting the writ stem from the disturbing trend demonstrated in the case law that arbitrators, once legitimately impanelled pursuant to a contract or agreement between the parties, and assuming no "bias" on the part of the arbitrators, in essence have unlimited powers to reach a decision and assess the law and the evidence. In the instant case, the arbitrators ignored, disregarded and indeed disparaged evidence of Triton's criminal wrongdoing as presented in the form of admissions by Triton's own employees or ex-employees. In these circumstances, the arbitrators are obligated to safeguard the public's interest in protecting the integrity of the judicial process as manifested in the Nordell/Triton arbitration proceedings by ensuring that Triton did not benefit from its own admitted wrongdoing.

The only way to ensure that arbitrators are not "above the law" is to allow court intervention in limited circumstances such as in the instant case where to enforce

the award would be contrary to public policy due to the obvious violations of federal securities laws. Such violations are evident from Triton's conduct which reveals, based on its own confessions of wrongdoing, that it violated the Foreign Corrupt Practices Act and federal securities laws stemming from its failure to disclose in its registration statements the Calloway Report, and the illegal bribes to Indonesian officials.

However, the arbitrators, apparently so bent on obtaining the "right result," ignored these violations of federal law, contributed to a "cover up" of the violations by ordering the Calloway Report and Calloway's testimony sealed, and then, incredibly, actually based their award on the fraudulent accounting data that was the subject of the violations of federal securities laws.

This Court has held that no arbitration award which violates a specifically articulated public policy is enforceable. *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 32, 108 S. Ct. 364 (1987); *W.R. Grace and Co. v. Local Union 759*, 461 U.S. 766, 103 S. Ct. 2177 (1983). Hence, the arbitrators are not above the law in fashioning their award but rather they are subservient to the basic legal concept that no award may violate public policy. The Ninth Circuit in its Opinion completely ignored the dictates of this Court's instruction in *Misco* and *W.R. Grace and Co.* This Court should grant this petition to demonstrate that an arbitration award which violates public policy cannot stand.

A. The Decision Below Is in Conflict with This Court's Decisions in *W.R. Grace and Co.* and *Misco*

1. The Rationale Of The *W.R. Grace and Co.* and *Misco* Decisions

In *W.R. Grace and Co.*, a company sought relief from an arbitration award rendered under a collective bargaining labor agreement. 462 U.S. at 762-64. W.R. Grace and Co. was seeking relief from an arbitration award which required it to reshape its work force pursuant to a court order in an unrelated case due to past discrimination against women. *Id.* at 761. W.R. Grace and Co., in violation of the collective bargaining agreement, began to lay off senior male employees. *Id.* In its effort to overturn the arbitration award which prohibited the company from laying off company male employees in violation of the collective bargaining agreement, W.R. Grace and Co. argued that enforcement of the award was against public policy because it meant that it would be in contempt of the federal court's order requiring a more gender-balanced work force. *Id.* at 769.

This Court ultimately rejected W.R. Grace's argument that enforcement of the adverse arbitration award would require the company to violate the federal court's consent decree entered to remedy past discrimination against women, and thus violate the public policy which mandates compliance with court orders. *Id.* at 770. This Court was unsympathetic to this argument because it was W.R. Grace's own conduct which placed it in that undesirable position.

Despite the fact that this Court upheld the award, the Court noted in strong language that if the arbitrators'

award ". . . violates some explicit public policy, we are obligated to refrain from enforcing it." *Id.* at 766. This Court noted that the policy must be well-defined and specifically articulated, concluding that, "It is beyond question that obedience to judicial orders is an important policy." *Id.*

This Court expanded these principles with vigor and conviction in *Misco.* This Court in *Misco* applied the test of *W.R. Grace and Co.* to *Misco* in refusing to overturn an arbitration award on grounds that to do so would violate an alleged well-recognized public policy against the operation of dangerous machinery while under the influence of drugs. 484 U.S. at 42. This Court faulted the Court of Appeals for concluding that the enforcement of the award would violate this alleged public policy because the lower court did not review existing laws and case law to determine that there existed such a specifically articulated policy. *Id.*

This Court in *Misco,* while refusing to overturn the arbitration award on public policy grounds, reaffirmed the vitality of the "public policy doctrine" by specifically identifying its two legal underpinnings: (1) the common law notion that courts may refuse to enforce contracts that violate the law or a public policy; and (2) the public's right to have well-established public policy respected and honored even within the confines of a supposedly "private agreement" to arbitrate. 484 U.S. at 42. This Court's comments in *Misco* are instructive:

> A court's refusal to enforce an arbitrator's award under a collective-bargaining agreement because it is contrary to public policy is a specific application of the more general doctrine,

> rooted in the common law, that a court may refuse to enforce contracts that violate law or public policy. [Citations omitted.] That doctrine derives from the basic notion that no court will lend its aid to one who founds a cause of action upon an immoral or illegal act, and is further justified by the observation that the public's interests in confining the scope of private agreements to which it is not a party will go unrepresented unless the judiciary takes account of those interests when it considers whether to enforce such agreements. [Citations omitted.]

Id.

2. The Unrefuted Evidence Indicates Triton Committed Violations Of The Federal Securities Laws

In the instant case, there was unrefuted evidence of violations of federal securities laws, the Foreign Corrupt Practices Act, and California fraud laws based on the admissions of Triton employees and ex-employees. The genesis of all these violations emanates from the Calloway Report. (Appendix F.) This report was written by Michael A. Calloway, a high level executive in corporate internal audit from Triton's headquarters in Dallas, Texas. Triton dispatched Calloway to Indonesia to investigate the accounting methods used by Triton for its Indonesian operations, including the Enim Field Oil Project, which was the subject of the Triton/Nordell joint venture. Calloway's trip occurred in September 1989, well after Triton took control of the Project in October 1988. Calloway's

observations and recommendations are directed to Triton's upper management and are memorialized in the Calloway Report. (Appendix F.)

The Calloway Report is remarkable in its admissions of wrongdoing and thoroughly candid in its demands for corrective action. But Triton, instead of taking that corrective action and disclosing the lack of accounting controls and the payment of bribes to foreign officials in its registration statement as required under federal securities laws, ordered the destruction of the Calloway Report. Calloway admitted during his testimony that Triton's upper management had ordered that the original and all copies of his report be destroyed. (Appendix G, APP-55.) Calloway testified as follows:

> Q: [by Nordell's counsel]: What happened to the original of this document [the Calloway Report]?
>
> A: [by Calloway]: It was destroyed.
>
> Q: Who destroyed it?
>
> A: I did.
>
> Q: Why did you destroy it?
>
> A: It was distributed to the people. They were shown the report, after my boss, they read it, he said, 'Collect the copies and have them destroyed,' so I did.
>
> Q: Did he say why you want them all destroyed?
>
> A: No.
>
> (Parentheticals added for context.)

Id.

Astonishingly, the arbitrators assisted Triton in its cover-up by ordering that the Calloway Report, all of Calloway's testimony, and all documents and testimony relating to the Calloway Report, be sealed. In fact, the panel retained the only copies of the Calloway Report and the transcripts of Calloway's testimony and would not even provide copies to Nordell's counsel for use in the arbitration confirmation proceedings in federal court until the court ordered disclosure to Nordell's counsel after Nordell successfully litigated this issue against both Triton and the American Arbitration Association.

The strong action Triton took in an effort to prevent public disclosure of the Calloway Report is understandable, but the arbitrators' complicity in this posture is incomprehensible. At the very least, the arbitrators should have reported this information to the federal authorities such as the Securities and Exchange Commission ("SEC"), but instead the arbitrators assisted Triton in its efforts to prevent the authorities from obtaining this information.

Calloway reported that Indonesia was "a country of state supported corruption." (Appendix F, APP-43.) Calloway stated in his report that Triton was regularly engaged in "payoffs," *i.e.*, bribes, in Indonesia. (Appendix F, APP-43-48.) Most disturbing to Calloway was that Triton paid bribes to the Indonesian government auditors to "cook the books" on the Enim Field Oil Project. The Project had to be audited by the Indonesian government auditors to determine the royalties that Triton would have to pay to Pertamina, the government-owned oil company of Indonesia. In his report, Calloway wrote as follows:

> "What is worse, and this is extremely confidential, is that we paid the [Indonesian government] auditors in order to have their audit exceptions taken care of. Instead of the $600,000 of audit exceptions [Triton otherwise would have had], we paid them approximately $150,000 to $200,000 [to eliminate the exceptions]. This part is particularly bad to me. I had hoped that at least the Indonesian auditors were honest. But, I was told time and again that every Indonesian will steal from you."
>
> (Parentheticals added for context.)

(Appendix F, APP-44.)

Calloway in his testimony admitted the facts that constituted the bribes paid to the Indonesian state auditors to "take care of" the government audit, although he tried to temper during his testimony the remarks he had made previously in the Calloway Report about "payoffs" by testifying that he was "not sure" that he would call the payoffs "bribes." Nevertheless, he admitted the factual predicate for the bribes as follows:

> Q: [by Nordell's counsel]: In fact you [Triton] paid the Pertamina [Indonesian government] auditors $150,000 to $200,000 to take of, shall we say, exceptions to cost recovery items. Is that the truth?
>
> A: [by Calloway]: Is correct.
>
> * * *
>
> Q: Triton basically paid a one hundred and fifty to two hundred thousand dollars to Pertamina auditors to have them forget about it, if you will, $600,000 audit exceptions?

A: As I understood the situation, that is correct.

(Parentheticals added for context.)

Id.

Moreover, Calloway reported that the lack of internal accounting controls was so pervasive that he, as the chief of internal audit, could not distinguish a real transaction from one that was false for the Enim Oil Field Project in Indonesia. (Appendix F, APP-44.) Calloway described the situation in his report as follows:

> " . . . Unless you are the one on the scene at the time, it is very difficult, perhaps impossible, to tell a real transaction from one that has been faked for cost recovery purposes."

Id.

More alarmingly, Calloway never even ordered a fraud audit to address the issue. Undoubtedly, the fact that upper management had ordered his report destroyed influenced his thinking. Even though Calloway acknowledged that it was impossible for him as the chief of internal audit to distinguish a real transaction from a non-existent phantom transaction, he never ordered a fraud audit. (Appendix G, APP-60.)

Nor was this accounting fraud limited to "covering up" Triton's payment of bribes to the Indonesian government auditors. It extended to mundane payments Triton was required to make for the operation of the Project. J.M. McDonough, a Triton purchasing employee from Triton's headquarters in Dallas, made extensive equipment purchases for the Project in Indonesia. McDonough testified

that, after a telephone call he had with McAdoo of TII about a large oil rig purchase for the Project, he altered the purchase order. (ER 29 at 1605.) He testified as follows:

> Q: [by Nordell's counsel]: You said that's what you did. What did you, Mr. McDonough, do after the phone call?
>
> A: [by McDonough]: I arbitrarily jacked the price up on the equipment.
>
> Q: What physically did you do?
>
> A: Physically, I took the purchase order with the original price on it. I put a number beside it. I figured that we could – they could live with. I sent the purchase order with the number to McAdoo [a Triton employee]. I had discussed all this with our Mr. Ciavarra [a high level Triton executive] before we ever did it.
>
> (Parentheticals added for context.)

Id.

The testimony of Richard Poulton, the Price Waterhouse auditor and ex-TII employee who was forced by Triton to resign for his failure to countenance Triton's fraudulent accounting procedures, is even more damning. Poulton testified that Triton's operation in Indonesia was lacking in even the rudimentary audit controls. (Appendix H, APP-84.) Poulton testified as follows:

> Q: [by Nordell's counsel]: . . . In your opinion were any of these [accounting] problems exacerbated by what you saw as Triton's operations?

A: [by Poulton] In my opinion, yes, there were things that Triton, you know, had in their procedures that, you know, did lead to a further deterioration.

* * *

A: Why do you say that?

Q: Well, in terms of internal control it is very critical to the concept of a segregation of duties – I am going to place it first in terms of, you know, in the United States and then I will, you know, expand, you know, on how that translates to operations in Indonesia. Critical to management control and separation of duties is that the people who are responsible for contacting vendors and making commitments for the procurement of goods are not involved in verifying receipt leading to payment for goods. In the United States this would be a very, very serious internal control matter. In a country such as Indonesia where problems with incorrect payments being invoiced for goods not received is a very, very common problem. I considered their method of approving payments prior to independent confirmation of goods to be a gross violation of very, very basic internal control principles.

(Parentheticals added for context.)

Id.

Poulton was particularly concerned about Triton's bribes paid to Pertamina, i.e., Indonesian government, auditors for the audit of the Project. Other Triton employees regularly referred to this practice as "buying

the audit." Poulton specifically recalled one meeting when this issue was discussed and his shock at Triton's cavalier treatment of this grave matter. Poulton testified as follows:

> Q: [by Nordell's counsel]: Did you express those concerns at this meeting?
>
> A: [by Poulton]: I did express that concern and Mr. McClure stated that Triton had in the past bought the audit from Pertomina [sic] and that they would continue to do so to get this transaction approved by Pertomina [sic]. I have to say that I was shocked by that treatment. Having been a director of internal audit for a New York stock exchange company, in my mind, you know, discussing as a means to implement accounting policy – and I understood the word "buy the audit" to mean bribe Pertomina [sic] auditors. To me it represented an illegal transaction, the proposal of an illegal transaction.

(Appendix H, APP-93-94.)

Poulton subsequently was forced under pressure from Triton to resign for his refusal to participate in Triton's fraudulent accounting practices. Similarly, former Triton Chief Financial Officer, Jimmie Janacek, was terminated by Triton for refusing to participate in Triton's accounting fraud. Janacek sued Triton for wrongful termination of his employment and received a $124 million jury verdict against Triton. (Request for Judicial Notice, Exh. 1.)

3. Because Triton's Violations Of Federal Securities Laws Are Contrary To Well-Established Public Policy, This Court Should Refuse To Enforce The Arbitration Award

The above-described conduct constitutes an illegal bribe under the Foreign Corrupt Practices Act which is codified as 15 U.S.C. §§ 78dd-1 and 78dd-2. A violation of the Foreign Corrupt Practices Act is a criminal offense. 15 U.S.C. § 78dd-2(g).

These bribes are not exempted as facilitating payments allowable to secure routine governmental action. *See*, 15 U.S.C. § 78dd-2(b). The statute specifically defines "routine governmental action" as the securing of standard government paperwork such as licenses, visas and essential services such as telephone service and police protection. 15 U.S.C. § 78dd-2(h)(4)(A). Clearly, Triton used the bribes it paid to Indonesian government officials to obtain government approval of the audit of a complex business operation, i.e., the Enim Oil Field Project. Such an audit does not constitute "routine government action."

The concept of a bribe is broadly interpreted to encompass any payoff to a foreign official for purposes of procuring or retaining business. *Instituto Nacional De Comercializacion Agricola (Indeca) v. Continental Illinois National Bank and Trust Co.*, 576 F. Supp. 985, 990 (N.D. Ill. 1983). Triton's payment of $200,000 to the Indonesian government auditors to eliminate $600,000 worth of audit exceptions is a bribe designed to retain Triton's contract with Pertamina (the Indonesian owned and operated oil company) for the Enim Oil Field Project.

In addition, Triton's failure to disclose in its registration statement the bribes, the Calloway Report, the fraudulent accounting practices, and the Janacek lawsuit, constitute material omissions. These omissions are violations of Section 11 of the Securities Act of 1933 (15 U.S.C. § 77k) and Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) because they are material to the financial condition of Triton's Indonesian operations. Both violations carry possible criminal penalties. *See*, 15 U.S.C. § 78ff(a) and 15 U.S.C. § 77x.

Finally, to the extent that these acts of bribery and fraudulent accounting impacted, and were directed to Triton's business partner in the Project, Nordell, they constituted a civil fraud in violation of California's fraud statutes. Cal. Civ. Code §§ 1572, 1573, 1709, and 1710.

It is clear that Triton's illegal conduct in the payment of bribes and its fraudulent accounting practices is against public policy. Thus, Triton's award cannot stand. The principle that a court will not enforce a contract (including an arbitration award) that violates public policy is well-ingrained in the jurisprudence of this Court. *See, Hurd v. Hodge*, 334 U.S. 24, 68 S. Ct. 847 (1948) (a court's final judgment enforcing racially restrictive real estate covenants cannot stand as violative of public policy); *McMullen v. Hoffman*, 174 U.S. 639, 19 S. Ct. 839 (1899) (a contract which encompassed bid-rigging and other fraudulent business practices is unenforceable as contrary to public policy).

B. It Is A Violation Of Public Policy For The Arbitration Panel To Provide Affirmative Relief To Triton Because Triton May Not Benefit From Its Own Wrongful Conduct

Based on Triton's admittedly fraudulent accounting practices, Triton and TII may not receive an arbitrators' award which would allow it to benefit from its own wrongful fraudulent conduct in violation of the "unclean hands doctrine." The doctrine is codified in Cal. Civ. Code § 3517 as follows:

> No one can take advantage of his own wrong.

The courts have used this doctrine to prevent a party from receiving affirmative relief from a court or tribunal when that party has been guilty of wrongful, fraudulent or immoral conduct relating to the matter which the court is considering. *Richman v. Bank of Perris*, 102 Cal. App. 71 (1929); *Buck v. Dahlgren*, 23 Cal. App. 3d 779, 788-89, 100 Cal. Rptr. 462 (1972).

The enforcement of Triton's award by this Court would violate the clear public policy enunciated in the unclean hands doctrine codified in Cal. Civ. Code. § 3517. *Misco*, 484 U.S. at 42. Where the enforcement of the award would violate public policy, the court is obligated to vacate the award. *Id.*

It is clear that Triton based its own damage calculations on this fraudulent accounting data and, incredibly, used Calloway as a witness to sponsor this data. Never did Triton "purify" this tainted accounting data by doing an independent fraud audit to confirm the validity of the

accounting data it used to present its own damage calculations.

Even more disturbing is the fact that the arbitrators invited a post hearing submission by Triton for damage calculations prepared by Calloway. (Appendix I.) Triton provided a response, which did not set forth the evidentiary foundation for any of its damage calculations but rather assumed the validity of its own fraud tainted financial data. (Appendix J.) Nordell provided a written response to Triton's post hearing submission, objecting to Triton's data as lacking in evidentiary foundation. (Appendix K.) Inexplicably, the panel refused to accept Nordell's responsive written submission and in essence struck it from the record. (Appendix L.)

This Court should refuse to condone Triton's fraud and illegal conduct and hence, should vacate the arbitrators' award. The arbitrators violated the public policy concept known as the unclean hands doctrine by providing TII and Triton with affirmative relief and the forfeiture remedy. Nordell filed an application for correction on these grounds, i.e., Triton's violation of the unclean hands doctrine, which the arbitrators rejected. (ER 115, Exh. GG at 76.) As such, the arbitrators' complete disregard of the public policy dictates of the clear-cut unclean hands doctrine should be examined by this Court. For that reason alone, this Court should grant this Petition.

CONCLUSION

For the reasons set forth herein, Nordell respectfully urges that the Court grant certiorari in this case. The decision of the Court of Appeals ignores the clear dictates set forth by this Court in *W.R. Grace and Co.* and *Misco* prohibiting the enforcement of arbitration awards which offend well-established public policy. Only this Court can revitalize public confidence in the arbitration process by reversing Triton's award, which at best ignores, and at worst condones, Triton's clear violations of federal securities laws and state fraud laws.

Dated: December 17, 1993

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORDELL INTERNATIONAL RESOURCES, LTD. Plaintiff-Counter-Defendant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD., Defendants-Counter-Plaintiffs-Third Party Plaintiffs-Appellees. v. VERONEX RESOURCES LTD., Third-Party-Defendant-Appellant.	No. 92-55058 D.C. No. CV-90-6894-ER
NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD. Defendants-Counter-Plaintiffs-Third Party Plaintiffs-Appellees.	No. 92-55433 D.C. No. CV-90-6894-ER

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant, VERONEX RESOURCES LTD., Third-Party-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD.	No. 92-55434 D.C. No. CV-90-6894-ER **MEMORANDUM*** (Filed July 23, 1993)

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding

Argued and Submitted April 6, 1993
Pasadena, California

Before: **WALLACE**, Chief Judge; **O'SCANNLAIN** and **FERNANDEZ**, Circuit Judges.

We must consider issues concerning the extent of an arbitration panel's authority in resolving a contractual dispute.

I

In 1988, appellant Nordell International Resources, Ltd. ("Nordell") entered into a contract with appellee Triton Indonesia, Inc., a newly created, wholly-owned subsidiary of appellees Triton Energy Corporation and

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Triton Oil Limited (collectively "Triton"). The contract consisted of two integrally related agreements, the Farm-out Agreement and the Joint Operating Agreement, which provided for the assignment to Triton of an undivided participating interest of 60% in an oil production field in Sumatra, Indonesia. Veronex Resources, Ltd. ("Veronex"), the parent corporation of Nordell, ratified the agreement.

Pursuant to the contract, Triton became the operator of the project with full responsibility for the technical, operational, managerial, financial and accounting aspects of the project. Triton was obligated to invest a disputed amount into the project, either $21 million or $24 million, after which Nordell and Triton were to contribute their proportionate share of the operating costs.

In November 1989, Nordell and Triton began to have disagreements over Triton's accounting practices, and Nordell demanded arbitration. During this time, Nordell refused to pay the cash calls demanded by Triton for the operation of the project. Nordell brought several claims against Triton, and Triton counterclaimed. Each party requested a complete forfeiture of the other party's interest in the project, indicating that the relationship had deteriorated to such a degree that working together had become impossible.

The arbitration proceeding was held for three weeks in Singapore in October 1990 before a three-member panel from the American Arbitration Association. The arbitrators found in favor of Triton, and ordered Nordell to pay Triton approximately $1 million for cash calls and

damages. The arbitrators entered the award against Veronex as well, finding that Veronex was the alter ego of Nordell. Finally, the arbitrators redistributed the interests of Nordell and Triton in the project.

In December 1990, Nordell filed a motion to vacate the arbitration award in the Central District of California. In January 1991, Triton filed a motion to confirm the award against Nordell and Veronex. In February 1991, the district court denied Nordell's motion to vacate and stayed Triton's motion to confirm pending remand of three specific issues for clarification by the arbitration panel, one of which was the reasons for granting relief against Veronex.

In August 1991, the arbitration panel issued its clarification. The district court confirmed the award in its entirety. Nordell appeals, arguing that the arbitration panel (1) exceeded its authority by disregarding the plain language of the contract; (2) exceeded its authority by relying on fraudulent financial data in crafting the award; (3) exceeded its authority by redistributing the interests of the parties in the project; and (4) engaged in misconduct and was partial to Triton. Veronex also appeals, arguing that the arbitration panel did not have the authority to enter a judgment against it.

II

The review of an arbitration award by a court is extremely limited. Section 10(a) of the Federal Arbitration Act provides that an award may be vacated only if one of the following conditions is met:

> (1) Where the award was procured by corruption, fraud or undue means.
>
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> (3) Where the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
>
> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). We have interpreted this section narrowly, holding that "confirmation is required even in the face of erroneous . . . misinterpretations of law." *French v. Merrill Lynch*, 784 F.2d 902, 906 (9th Cir. 1986) (citation omitted). "An arbitrator's decision must be upheld unless it is 'completely irrational' or it constitutes a 'manifest disregard of the law.' " *Id.* (citation omitted).

III

A

Nordell argues that the arbitrators disregarded the plain language of the contract and thus exceeded its authority under section 10(a)(4) of the Federal Arbitration Act.

A court has no authority to vacate an award solely because of an alleged error in contract interpretation. *Employers' Ins. of Wausau v. National Union Fire Ins. Co.*, 933 F.2d 1481, 1486 (9th Cir. 1991); *San Martine Companie*

de Navegacion S.A. v. Saguenay Terminals, Ltd., 293 F.2d 796, 800 (9th Cir. 1961); *see also Bernhardt v. Polygraphic Co. of America Inc.*, 350 U.S. 198, 203 n.4 (1956) ("[W]hether the arbitrators misconstrued a contract is not open to judicial review"). "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *United Paperworks Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). "The arbitrator may not ignore the plain language of the contract," *id.*, but, "if on its face, the award represents a plausible interpretation of the contract, judicial inquiry ceases and the award must be enforced." *George Day Constr. Co. v. United Bhd. of Carpenters & Joiners, Local 354*, 722 F.2d 1471, 1477 (9th Cir. 1984).

The disputed issue here is whether Triton had an obligation to make cash calls or joint interest billings ("JIBs") to itself. Each month, as operator of the project, Triton would prepare a statement estimating the costs and expenses for the coming month. Triton would then issue a "cash call" to Nordell , requesting its 40% share of the estimated expenses in cash, up front. At the end of the accounting period, Triton would issue JIBs accounting for the actual expenditures. Nordell contends that Triton had an obligation to issue cash calls to itself, and thus also contribute its share before the expenses came due.[1]

---

[1] Triton does not dispute that it is responsible for 60% of the costs of operating the project. The disputed issue concerns only whether Triton is obligated to make cash calls on itself.

The arbitrators concluded that Triton had no obligation under the contract to issue cash calls to itself. Nordell argues that this conclusion disregards the plain language of section 7.4 of the Farmout Agreement and section 2(c) of the Joint Operating Agreement Annex (Accounting Procedures).

Section 7.4 of the Farmout Agreement provides:

> [E]ach party shall bear and pay its undivided participating interest share of all . . . costs and expenses under the [Joint Operating Agreement]

Section 2(c) of the Joint Operating Agreement Annex provides:

> The parties shall advance to the operator their share of the required funds.

Nordell argues that because section 2(c) uses the term "parties" and not "party," and because Nordell and Triton are the only two parties to the agreement, the contract requires both Nordell and Triton to advance the funds through cash calls. Nordell further argues that any other interpretation of those provisions is "implausible" and thus grounds for vacation.

Triton presented evidence of the following to the arbitrators:

(1) The parties did not intend to require Triton to make cash calls on itself. Instead, the parties agreed that Triton as operator would have the right to receive contributions from non-operators for the non-operators' share of expenses. Triton, as operator, would then have the obligation to pay 100% of the costs of the project as they were incurred.

(2) The term "parties" instead of "party" was used in section 2(c) because the parties contemplated that Nordell at some point might assign a portion of its participating interest to an outside investor.

(3) The custom and practice in the oil and gas industry was consistent with Triton's understanding of the contract. Under the typical Joint Operating Agreement in the oil and gas industry, the operator has the right to receive payment in advance of each non-operator's share of the costs upon demand, but the operator itself does not have to make the payments until the bills come due. The operator has no obligation to make cash calls on itself.

The arbitrators concluded that Triton had no obligation to make cash calls on itself. Viewed in light of Triton's arguments, this construction of the contract is a plausible interpretation of the contract provisions, and we must uphold it.[2]

B

Nordell argues that the arbitrators exceeded their authority by relying on fraudulent financial data in

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[2] In light of our acceptance of the arbitrators' interpretation of the contract, Nordell's argument that the arbitrators acted in manifest disregard of the law in concluding that Nordell breached the contract must also fail. Nordell argues that by not making cash calls, Triton breached the contract, which in turn relieved Nordell of its obligations to perform. Since Triton had no obligation to make cash calls on itself, however, Nordell breached the contract when it ceased making the cash calls. The arbitrators did not act in manifest disregard of the law of contracts in making this determination.

crafting the award, and that, accordingly, the award is irrational and must be vacated under section 10(a)(4) of the Arbitration Act.

Nordell presented much evidence to the arbitrators about the allegedly fraudulent accounting practices of Triton. The reliability of Triton's data was a hotly contested factual issue during the proceedings. By relying on the data in the face of allegation of fraud, the arbitrators implicitly made a factual finding that the data were reliable.

In arguing now that, as a matter of fact, the data were fraudulent, Nordell is asking this court to make a factual finding contrary to that made by the arbitrators. We "may not predicate reversal on the arbitration panel's erroneous findings of fact." *Employers Ins. of Wausau v. National Union Fire Ins. Co.*, 933 F.2d 1481, 1486 (9th Cir. 1991). Rather, we are "bound by the arbitrators' factual findings," *South East Atl. Shipping, Ltd. v. Garnac Grain Co.*, 356 F.2d 189, 192 (2d Cir. 1966), unless the award is based on findings wholly without support in the record. *Compare Amalgamated Meat Cutters v. Great W. Food Co.*, 712 F.2d 122, 123 (5th Cir. 1983) ("This court will not review the factual findings or merit determinations made in an arbitration award.") *and International Union of Elec. Radio v. Ingram Mfg.*, 715 F.2d 886, 890 (5th Cir. 1983) ("[a]bsent a showing of fraud or bias or prejudice (on the part of the arbitrators), the courts have no power to review findings of fact of arbitrator"), *cert. denied*, 466 U.S. 928 (1984) *with National Post Office Mailhandlers, Watchmen, Messengers and Group Leaders Div. v. United States Postal Serv.*, 751 F.2d 834 (6th Cir. 1985) (vacation proper where arbitrator based its holding on erroneous

finding that an employee had pleaded guilty to an offense *before* his employer terminated him when in fact he had pleaded guilty *after*; date of employee's termination and the date on which he pleaded guilty were clear from the record and not in dispute). The Third Circuit summarized the extremely deferential standard of review as follows:

> [R]eview of arbitrator's factual findings is not whether those findings were supported by the weight of the evidence or even whether they are clearly erroneous. All that is required is *some* support in the record. When the court finds some support, the inquiry is over.

Tanoma Minn. Co. v. Local Union No. 1269, UMWA, 896 F.2d 745, 748 (3d Cir. 1990) (emphasis added; citations omitted).

Triton points to testimony by several witnesses that Triton's accounting practices were lawful and reliable as support for the arbitrators' reliance on the disputed data. This testimony is enough to provide "some support" for the arbitrators' implicit finding that the data were reliable. Having found some support in the record, our inquiry is over and the arbitrators' implicit finding must stand.

That the finding was implicit, not explicit, is not important. Arbitrators are not required to make explicit factual findings, nor is an arbitrator's award entitled to less deference when its findings are not explicit. *See McKesson Corp. v. Local 150 IBT*, 969 F.2d 831, 833-34 (9th Cir. 1992); *Western Employers Ins. Co. v. Jefferies & Co.*, 958 F.2d 258, 261 (9th Cir. 1992). The Eighth Circuit rejected an argument similar to Nordell's in *Osceola County Rural Water Sys. v. Subsurfco*, 914 F.2d 1072 (8th Cir. 1990). In

that case, the district court found that the award in favor of Subsurfco violated public policy because the arbitrators ignored testimony that test results had been falsified. The Eighth Circuit reversed, holding:

> [A]rbitrators are not required to elaborate on the reasons in support of an award. There is nothing in the record to suggest that the arbitrators accepted as true the testimony . . . regarding the falsification of test results.

Id. at 1075. Here, similarly, the arbitrators were not required to explain the reasons for rejecting Nordell's allegations before the award is entitled to the deference outlined above.[3]

C

Nordell argues that the arbitration panel exceeded its authority under section 10(a)(4) by reforming the agreement between the parties. An arbitrator exceeds its authority when it decides issues not submitted to it or acts in manifest disregard of the law.

Here, both Nordell and Triton asked the arbitration panel, through the exercise of equitable powers, to redistribute the interests of the parties in the project. Throughout the arbitration proceedings, Nordell requested a "divorce" from Triton, arguing that the parties could no longer work together. Nordell emphatically argued that

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[3] Since we will not contravene the arbitrators' implicit factual finding that the data were reliable, we reject Nordell's contention that the arbitrators acted in manifest disregard of the law by ignoring the unclean hands doctrine.

the arbitrators had the power to redefine the roles of the parties and, in fact, argued that the arbitrators had the authority to order the complete forfeiture of Triton's interest in the project. In response to each party's request for equitable relief, the arbitrators made the following award:

> [I]n view of both parties' request for an adjustment of the interest of each in the project and in view of Nordell's demonstration of bad faith in not paying Cash Calls and incessant harassment of Triton's operations, Nordell's (and Veronex's) interest in the ENIM project . . . [will] be converted to a "net profits" interest in the project in the amount of five percent (5%) of the net profits realized each year from the project as determined in accordance with generally accepted accounting principles applied on a consistent basis.

Since the parties asked for the redistribution of their interests, granting that remedy was within the scope of submission. Moreover, ordering the particular remedy was within the broad equitable powers of the arbitrators. The agreement between Triton and Nordell expressly incorporated the Committee Rules of the American Arbitration Association. Rule 43 provides: "Scope of Award: The Arbitrator may grant any remedy or relief which the Arbitrator deems just and equitable within the scope of the agreement of the parties." *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1062-63 (9th Cir. 1991) (quoting Rule 43). The contract contained provisions allowing forfeiture as a remedy for breach by either party; an award that adjusts the interests of the parties

but falls short of full forfeiture is "within the scope of the agreement of the parties."

Nordell argues that notwithstanding the general powers of arbitrators to enter equitable remedies, the specific remedy imposed here exceeded the powers of the arbitrators because it amounted to the imposition of punishment for the violation of an interim order that itself was beyond the powers of the arbitrators to enter. At the time the dispute arose, Nordell had stopped making cash call payments. After the arbitration began, Nordell asked the arbitrators to enter an interim order precluding Triton from issuing cash calls to Nordell during the pendency of the arbitration proceedings. The arbitrators refused to enter Nordell's requested order, and instead, issued an interim order requiring the parties to continue to fulfill their obligations under the contract "so as not to alter the status quo or position of any other party."[4] Nordell continued to refuse to make cash call payments after the order was entered. The arbitrators found that this amounted to a violation of the interim order.

Nordell argues that the issuance of the order was improper and that Nordell may not be penalized for the violation. Contrary to Nordell's assertions, however, it is

---

[4] The full text of the relevant provision of the interim order is as follows:

> Each of the parties are [sic] ordered to take no actions to prejudice the interests of the other party or parties prior to the conclusion of the arbitration proceeding and each should fulfill its respective obligations and perform its duties under the agreements in existence or at issue so as not to alter the status quo or position of any other party.

not clear whether the arbitrators fashioned the remedy at issue here because Nordell had violated the order. It *is* clear, in contrast to Nordell's contention, that the violation of the interim order was not the *sole* reason for the imposition of the remedy. The arbitrators gave three reasons for the redistribution: (1) both parties had requested an adjustment of the interests; (2) Nordell had demonstrated bad faith in not paying the cash calls; and (3) Nordell had incessantly harassed Triton in its operations. We need not determine, however, precisely what effect that violation of the interim order had on the remedy, because the imposition of the interim order was, in fact, within the arbitrator's power.

Nordell argues that issuance of the interim order was improper for two reasons: first, the interim order violated the status quo and an arbitrator may issue interim relief only to maintain the status quo, and second, the order was unconstitutionally vague and thus imposing penalties for its enforcement infringes upon Nordell's rights under the Due Process Clause.

Rule 34 of the Commercial Arbitration Rules of the AAA provides:

> The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Nordell argues that this provision indicates that an arbitrator may only enter an interim order to protect the status quo, and further, that the order here was not designed to maintain the status quo because at the time

the order was entered, Nordell had stopped making its cash call payments. This argument has no merit. Even if Rule 34 defined the limits of the powers of arbitrators to enter interim relief, and even accepting Nordell's interpretation of the rule, the status quo at the time that the order was entered was that Nordell had the *obligation* to make the cash call payments. The order was intended to reinforce those obligations and thus maintain the legal status quo. Additionally, the cash call payments were necessary to the ongoing operation of the project. By requiring Nordell to continue making the payments, the arbitrators apparently intended to protect both parties' interests in the project.

Nordell also argues that the order was unconstitutionally vague. However, the order merely required the parties to comply with their obligations under the contract. Nordell was aware that it had the obligation to pay cash calls. In fact, the arbitrators reminded Nordell of that fact several times after the interim order was entered. The order was not vague.

In sum, we conclude that the interim order was properly entered. We further conclude that the redistribution remedy was within the arbitrators' power.

D

1

Nordell argues that the award must be set aside because of misconduct on the part of the arbitration panel. Nordell specifically alleges that the arbitrators failed to allow it to submit evidence in response to the

supplemental presentation that Triton prepared at the arbitrators' request on the issue of damages.

Section 10(a)(3) of the Federal Arbitration Act provides that an arbitral award may be vacated "[w]here the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(4). However, "a showing of prejudice is a prerequisite to relief based on an arbitration panel's evidentiary rulings," including a failure to accept the submission of evidence. *Employers Ins. of Wausau v. National Union Fire Ins.*, 933 F.2d 1481, 1490 (9th Cir. 1991); *see also Mutual Fire, Marine & Inland v. Norad Reinsurance Co.*, 868 F.2d 52, 57 (3d Cir. 1989). Here, Nordell has neither alleged nor demonstrated that the refusal to accept its submission influenced the outcome of the arbitration. Thus, even if the refusal to accept the submission was wrongful, Nordell is not entitled to a vacation of the award. *See id.*

2

Nordell also argues that the award must be set aside because the arbitrators were partial to Triton. Nordell alleges that the following facts demonstrate the partiality of the arbitrators: (1) the acceptance of a claim presented by Triton for the first time on the penultimate day of the hearing; (2) evidentiary rulings in favor of Triton; (3) the sealing of a witness's testimony and report; (4) the status of Armour, one of the arbitrators, as former general counsel of ARCO; and (5) the severity of the award against Nordell and Veronex.

Except for the severity of the award, each allegation relied upon by Nordell concerns either behavior by the arbitrators at the proceedings or facts known to Nordell prior to the proceedings. "[A]s a general rule, [a party] must object to an arbitrator's partiality at the arbitration hearing before such an objection will be considered by the federal courts." *Apperson v. Fleet Carrier Corp.*, 879 F.2d 1344, 1358-59 (6th Cir.), *cert. denied*, 493 U.S. 809 (1989); *accord Sheet Metal Workers Int'l Ass'n v. Kinney Air Conditioning Co.*, 756 F.2d 742, 746 (9th Cir. 1985); *Berstein Seawell & Kove v. Bosarge*, 813 F.2d 726, 732 (5th Cir. 1987); *Cook Indus. Inc. v. C. Itoh & Co. (Am.) Inc.*, 449 F.2d 106, 108 (2d Cir. 1971), *cert. denied*, 405 U.S. 921 (1972). A court "will not entertain a claim of personal bias where it could have been raised at the arbitration proceedings but was not." *Fort Hill Builders, Inc. v. National Grange Mut. Ins. Co.*, 866 F.2d 11, 13 (1st Cir. 1989). Nordell did not assert its partiality claim at the hearing. To the contrary, Nordell emphasized its belief that the panel was *im*partial in its presentations before the arbitration panel. For example, in its closing argument, Nordell made the following statement:

> I said it before and I'll say it again. I have never seen such interest and real concern on the part of arbitrators. And we all appreciate it and I thank you very much for everything. We've gotten a very fair and complete hearing. Thank you.

By failing to object to the partiality of the arbitrators to the arbitrators themselves, Nordell has waived any partiality complaint arising from the arbitrators' behavior at the hearing or Armour's previous affiliation with ARCO.

Nordell did not have a chance, however, to present to the arbitrators its argument that the severity of the award demonstrates their partiality. Thus, Nordell has not waived this argument, and we must consider its merit. An arbitral award may be vacated if the arbitrators acted with "evident partiality." 9 U.S.C. § 10(a)(4). "The burden of proving facts which would establish a reasonable impression of partiality rests squarely on the party challenging the award." *Kinney*, 756 F.2d at 745. The party alleging evident partiality must establish specific facts which indicate improper motivation on the part of the arbitration panel. *Id.* at 746. This provision has been interpreted very stringently. For example, unlike in the judicial context, the appearance of impropriety, standing alone, is insufficient to taint the award. *Id.* A district court's finding that there was no partiality on the part of an arbitration panel is reviewed for clear error. *Id.* at 747.

Although we have never considered whether the magnitude of an arbitral award can, by itself, give rise to an inference of partiality on the part of arbitrators, other courts have flatly rejected that possibility. *See, e.g., Benjamin F. Shaw Co. v. Cincinnati Gas & Elec.*, 633 F. Supp. 841, 843 (S.D. Ohio 1968) ("Size of an award alone is not a sufficient basis for finding that the arbitrators are partial toward the winner."); *see also MSP Collaborative Developers v. Fidelity & Deposit Co. of Md.*, 596 F.2d 247, 251 (7th Cir. 1979) (construing the Indiana Uniform Arbitration Act, which was apparently modeled after the federal Act). Regardless whether there could ever be an award so disproportionate as to give rise to an inference of partiality, however, this award does not fall into that category. Each party had asked the arbitrators to restructure

the relationship between them, and had indicated that the parties were no longer able to work together. The district court concluded that the "reasonable inference to be drawn from the award is the panel attempted to strike a compromise that would permit both parties to maintain an interest in the project without unduly hindering the further administration of the project." The court found that because "there are reasonable theories upon which the panel could have relied in making its Award," the award is not so inherently unfair as to give rise to an inference of partiality. Those findings are not clearly erroneous.

In short, we reject Nordell's contention that the award must be vacated because the panel was partial in favor of Triton.

III

Veronex essentially makes two arguments in support of its position that the award against it must be vacated. First, Veronex argues that it did not agree to submit to the arbitrators' jurisdiction and thus is not bound by the arbitrators' decision. Second, Veronex argues that the arbitration panel exceeded its authority in deciding that Veronex is liable under the contract as the alter ego of Nordell because the parties *did not submit that issue* to the arbitrators for decision. This argument focuses on whether the arbitrators had the power to decide a particular issue, not whether they had jurisdiction over a party. We consider the second issue first.

A

An arbitration panel exceeds its authority under section 10(a)(4) if it decides issues other than those submitted to it by the parties. *Retail Store Employees Union Local 782 v. Sav-On Groceries*, 508 F.2d 500, 503 (9th Cir. 1975); *Totem Marine Tug & Barge v. North Am. Towing*, 607 F.2d 649, 651 (5th Cir. 1979). Here, neither party explicitly requested a review of Veronex's rights and obligations under the contracts between Triton and Nordell. Triton sought relief solely from Nordell, not from Veronex. Moreover, neither party explicitly asked the panel to decide whether Veronex was the alter ego of Nordell.

However, any issue that is "inextricably tied up with the merits of the underlying dispute" is within the scope of the submission and may be addressed by the arbitration panel. *McAllister Bros. v. A & S Transp. Co.*, 621 F.2d 519, 522-23 (2d Cir. 1980); *see also Nolde Bros. Inc. v. Local 358 Bakery and Confectionery Workers Union*, 430 U.S. 243, 254 (1977). The affairs of Veronex and Nordell were inextricably intertwined. Veronex was highly involved in the making and performance of the contracts. For example, the record reflects that much of the correspondence about the project was conducted between Veronex and Triton. The arbitrators may have had to resolve the alter ego issue as a threshold question in order to make sense of the transactions involved. Under these circumstances, we conclude that the alter ego question was implicitly submitted for review and, thus, properly considered by the arbitrators.

Nordell could thus be bound by that determination. *See Local No. 359 v. Arizona Mechanical & Stainless*, 836

F.2d 647, 653 n.6 (9th Cir. 1988) (citing cases). Whether Veronex is also bound depends on whether the arbitrators had jurisdiction over Veronex. *Id.* We now turn to that question.

B

The arbitration panel concluded that it had jurisdiction over Veronex because Veronex had ratified the agreement to arbitrate. Further, it implicitly rested its assumption of jurisdiction on the finding that Veronex was the alter ego of Nordell. The district court deferred to the arbitration panel's determination of its own jurisdiction.

The mere fact that Veronex ratified the agreement between Triton and Nordell, and thus agreed to arbitrate its disputes with Triton, does not in itself give the arbitrators the authority to enter an award against Veronex *in this particular proceeding*. Veronex was not named as a party to the proceeding. In the absence of the consent of the party, "arbitrators do not have power to add new parties to arbitration proceedings," *Pacific Reinsurance v. Ohio Reinsurance*, 935 F. 2d 1019, 1026-27 (9th Cir. 1991), and, by implication, cannot enter awards against non-parties.

If Veronex is the alter ego of Nordell, however, then Veronex can be bound by the award. Consent to arbitration may be implied from the voluntary submission of claims to the arbitrator. "A claimant may not voluntarily submit his claim to arbitration, await the outcome, and, if decision is unfavorable, then challenge the authority of the arbitrator to act." *George Day Constr. v. United Bhd. of*

Carpenters, 722 F.2d 1471, 1474 (9th Cir. 1984). If Veronex is the alter ego of Nordell, when Nordell filed its demand for arbitration, thereby voluntarily submitting to the jurisdiction of the arbitration panel, Veronex submitted to the arbitrators' jurisdiction as well. In other words, when Nordell submitted claims against Triton, Veronex, if Nordell's alter ego, necessarily joined it. Veronex, however, is not necessarily bound by the arbitrators' determination that it is the alter ego of Nordell. Instead, Veronex has the right to an independent judicial determination of that issue. *Arizona Mechanical & Stainless*, 863 F.2d at 653; *Laborers' Int'l Union v. Foster Wheeler Corp.*, 868 F.2d 573, 575-76 (3d Cir. 1980). Veronex may have *waived* that right, however, by agreeing during the course of the proceedings to allow the arbitrators to make that determination. *Cf. Ralph Andrews Prod. v. Writers Guild*, 938 F.2d 128, 130 (9th Cir. 1991) (appellant clearly reserved the issue of arbitrability for judicial determination). Whether Veronex waived this right is a factual determination that depends on the nature of Veronex's participation in the proceedings. We cannot make that determination based on the record before us; instead, such a factual determination must be made by the district court. We thus remand to the district court for a determination of whether Veronex consented to have the arbitrators decide the alter ego issue, and if Veronex did not consent, a de novo determination whether Veronex was in fact the alter ego of Nordell. *See Arizona Mechanical & Stainless*, 863 F.2d at 653.

IV

In sum, we affirm the confirmation of the arbitration award against Nordell. We reverse the confirmation of the arbitration award against Veronex, and remand to the district court for further proceedings.

AFFIRMED in part, REVERSED in part, and REMANDED. Each party to bear its own costs.

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff, v. TRITON INDONESIA INC., TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LTD., Defendants.	No. CV 90-6894-ER FINAL JUDGMENT CONFIRMING ARBITRATION AWARD (Filed Feb. 25, 1992)

IT IS HEREBY ORDERED AND ADJUDGED that the Arbitration Award and Resolution and Clarification of Arbitration Award (collectively, the "Arbitration Award") issued by the American Arbitration Association Panel on December 13, 1990 and August 30, 1991 and attached hereto as Exhibit 1 shall be confirmed in all respects.

IT IS FURTHER ORDERED AND ADJUDGED that a Final Judgment is hereby entered by the Court in favor of Triton Energy Corporation and Triton Indonesia Inc. and against Nordell International Resources and Veronex Resources Ltd. incorporating in its entirety the terms of the Arbitration Award attached as Exhibit 1, and such Award is hereby confirmed as a judgment of this Court.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: February 25, 1992

/s/ Edward Rafeedie
EDWARD RAFEEDIE
United States District Judge

AMERICAN ARBITRATION ASSOCIATION

Award of Arbitrators

Nordell International Resources, Ltd.

-and-

Triton Indonesia, Inc. and Triton Energy Corp.; Triton Oil (NZ) Limited

72 T199 0204 90

The undersigned arbitrators make the following findings with respect to the parties' interest in the case and hereby render their award in the above-captioned matter as follows:

1. Triton assumed the role of Operator of the Enim Project on October 7, 1988.

2. Triton Oil (NZ) Limited is not an independent participant in the Enim Project, and therefore cannot be considered as a separate party in this case.

3. The "carry" period, as provided in Paragraph 7.4 of the Farmout Agreement between Nordell International Resources, Ltd. ("Nordell") and Triton Indonesia, Inc. ("Triton"), during which Triton was obligated to bear all costs and expenses of the Enim Project from the Effective Date of the Farmout Agreement ended on November 25, 1989.

4. The decisions made at and actions taken as a result of Operator's Committee Meeting No. 2, held in Bangkok on August 28 and 29, 1989, did not constitute an amendment of the Farmout Agreement and of the Joint Operating Agreement of October 7, 1988, and the attachments thereto.

5. Triton, as operator, has no obligation to make Cash Calls and Joint Interest Billings to itself as provided for in the Accounting Procedure attached to the Joint Operating Agreement.

6. The $3 million dollar payment by Triton to Nordell on December 5, 1988, as provided in the Farmout Agreement, Paragraph 7.3, is not a deduction from the $21.2 million dollar net project investment Triton was obligated to make in the project.

7. The Net Project Investment in the Enim Project does not include the following adjustments requested by Nordell:

   A. Added interest expense of $870,356.00 charged by Veronex, Ltd. to Nordell for loans or advances.

   B. An addition to the Fixed Asset Accounts of $334,560.00.

   C. An addition to inventory of $604,590.00.

D. An addition to the Net Project Investment of $93,500.00 for Nordell corporate expense.

E. Any and all corporate interest expense.

9. Nordell is not to be reimbursed for "other assets" in the amount of $236,807.00. They were included in the $21.2 million original project investment.

10. Nordell is not to be reimbursed for $52,000.00 from the creditor list as these expenses were not documented.

11. Nordell is not to be reimbursed for the interest paid of $5,612.00 since it was properly charged by Triton.

12. Nordell defaulted under the terms of the Joint Operating Agreement in failing to pay Cash Calls No. 6 and No. 7.

13. In not paying the Cash Calls No. 6 and No. 7, Nordell failed to carry out the order of the Arbitrators issued on September 11, 1990, that the parties take no action to prejudice the interests of the other party and to perform their obligations under the Agreements until the Arbitration proceeding was concluded.

14. The decisions, findings and orders set forth in this award apply to the Areas of Mutual Interest as well as the Enim Project under the above-mentioned agreements.

15. In view of the above findings, the following order is hereby issued:

A. That Nordell or Veronex Resources Ltd., Nordell's parent company, pay to Triton Indonesia, Inc. on or before January 31, 1991, the following amounts:

i. Nordell deficit as of September 30, 1990, according to the KPMG report.. $ 663,402.00

ii. Revenue originally paid to Nordell by Triton from Pertamina proceeds in excess of what should have been paid as computed on the cash basis provided in the Agreements..... $ 329,053.00

Less:

Excess joint interest billing for November 1989, since the "carry" was met on November 25, 1989, rather than on November 1, 1989..... ($ 483,741.00)

Net sum due Triton from above adjustments ..... $ 508,714.00

iii. Triton's legal and arbitration costs:

Attorneys' fees..	$ 211,298.00	
Expenses of arbitration.....	$ 120,809.00	
Arbitrator's fees and expenses..	$ 90,000.00	(approx)
		$ 422,107.00

Total amount due Triton from Nordell $ 930,821.00

B. That, in view of both parties' request for an adjustment of the interest of each in the project and in view of Nordell's demonstration of bad faith in not paying Cash Calls and incessant harassment of Triton's operations, Nordell's (and Veronex's) interest in the Enim Project (including the Areas of Mutual Interest) effective October 1, 1990, be converted to a "net

profits" interest in the project in the amount of five percent (5%) of the net profits realized each year from the project as determined in accordance with generally accepted accounting principles applied on a consistent basis. KPMG Peat Marwick, or another international accounting firm, as selected by Triton, shall supervise and review the calculation of annual net profits. (Carryover of prior years' cost pool is not permitted for this calculation.) Such calculation of annual net profits shall be made by Triton within ninety (90) days of the end of its fiscal year. Payments made after the ninetieth day shall include interest at the rate of fifteen percent (15%) per annum.

Nordell, at its own expense, may retain either Arthur Andersen and Company, Ernst and Young, or Deloitte and Touche to audit the net income calculation. Differences of opinion between the accounting firms of Triton and Nordell shall be resolved solely between those accounting firms without the interference of either Triton or Nordell. In no event shall Nordell become involved directly with Triton in the calculation of net profit except through its accounting firm as provided above.

In the calculation of such net profit each year, actual overhead and technical services provided to Triton by offices and personnel outside of Indonesia shall in no event exceed $80,000.00 per month in the aggregate.

C. Nordell shall not consult nor deal with Pertamina with respect to the Enim Project except at Triton's request, which shall be complied with.

D. Original copies of all documents exchanged between the parties during the course of the arbitration proceedings shall be returned immediately to the respective party who submitted such documents.

E. Nordell shall refrain from participating in and interfering with the operations of the project in any manner from the date of this award.

The administrative fees and expenses of the American Arbitration Association shall be borne by Claimant, Nordell International Resources, Ltd., as directed by the Association.

This award is in full settlement of all claims and counterclaims submitted by either party against the other in this arbitration.

/s/ George P. Armour
George P. Armour, Esq.

/s/ Thomas D. Pyburn
Mr. Thomas D. Pyburn

/s/ Marvin Grudes
Mr. Marvin Grudes, CPA

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In the Matter of the Arbitrator between

Nordel International Resources Ltd.,
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and Triton Energy Corporation; Triton Oil (NZ) Limited

Case No: 72 T199 0204 90

United States District Court

Central District of California

Nordell International Resources, Ltd.,

Plaintiff,

vs.

Triton Indonesia, Inc., et al.,

Defendants.

No. CV 90-6894-ER

Order Remanding Issues to Arbitration Panel

Arbitrators' Resolution and Clarification of Arbitration Award in response to Order of Remand of Issues to Arbitration Panel.

In response to the Court's Order of Remand, the undersigned arbitrators hereby make the following findings:

1. The panel's award creates in Nordell a five percent (5%) net profits interest in the Enim project. Henceforth, Triton becomes the owner and holder of the entire interest, and Nordell has the right only to receive an amount equal to five percent (5%) of the net profits realized from the operation. Nordell no longer has any other interest in the Enim project, the Farmout Agreement and the Joint Operating Agreement, including Cost Oil Allocation. Participation in Investment Credit Oil and Participation in Net Revenue Interest Oil as provided in paragraphs 8, 9 and 10 of the Farmout Agreement. Any obligations to Gavan Petroleum Limited and Richport Resources, Ltd. under the agreements between Nordell and those companies were assumed by Nordell and/or Veronex on execution of the Farmout Agreement, and Triton has no obligations of any kind to either Gavan or Richport. Also, other obligations assumed by Nordell in the Farmout Agreement and Joint Operating Agreement shall remain in full force and effect.

2. In view of the net profits interest created in Nordell by the Award there is no future obligation of Nordell to pay any costs after September 30, 1990. Therefore, from that date Triton shall make no further cash calls or submit joint interest billings.

3. The Arbitrators found that the actions taken at the Operator's Committee Meeting No. 2, held in Bangkok on August 28 and 29, 1989 did not constitute

amendments to the Farmout Agreement and Joint Operating Agreement of October 7, 1988.

4. The Arbitrators found from the evidence adduced at the hearings that Veronex, the parent company of Nordell, was in fact the alter ego and controlling entity of Nordell in the inducement, negotiation and performance of the contract. Also, both corporations acted interchangeably as principals or agents for each other throughout the period in question. In addition, on November 13, 1988, Veronex specifically represented that it ratified and reaffirmed all the terms and conditions of the Farmout Agreement.

5. The Arbitrators found that despite the provisions of the Farmout Agreement, Triton was in fact the operator of the project from October 7, 1988 since all the acts and decisions necessary to carry out the operations were performed by Triton. Nordell was incapable of carrying out the management and operation of the project.

By reason of the foregoing, the undersigned arbitrators hereby state that the findings, orders and payments set forth in the Award of December 13, 1990 remain in full force and effect, and respectfully request the Court to confirm the Arbitration Award.

/s/ George P. Armour
Arbitrator George P. Armour

/s/ Thomas D. Pyburn
Arbitrator Thomas D. Pyburn

/s/ Marvin Grudem
Arbitrator Marvin Grudem

Dated: August 30, 1991

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORDELL INTERNATIONAL RESOURCES, LTD.,

Plaintiff,

v.

TRITON INDONESIA INC. TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LTD.,

Defendants.

TRITON INDONESIA INC. and TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LTD.,

Counter-Plaintiffs and Third-Party Plaintiffs,

vs.

NORDELL INTERNATIONAL RESOURCES, LTD.,

Counter-Defendant and

VERONEX RESOURCES, LTD.

Third-Party Defendant.

No. CV 90-6894 ER (Sx)

ORDER GRANTING DEFENDANT TRITON'S MOTION TO CONFIRM ARBITRATION AWARD AND ARBITRATORS' CLARIFICATION AND RESOLUTION OF ARBITRATION AWARD; DENYING PLAINTIFF NORDELL'S MOTION FOR RECONSIDERATION; DENYING THIRD-PARTY DEFENDANT VERONEX'S MOTION TO VACATE

(Filed Nov. 25, 1991)

Having read and considered the pleadings filed in this matter, IT IS HEREBY ORDERED that defendant Triton's Motion to Confirm Arbitration Award and Arbitrators' Clarification and Resolution of Arbitration Award is granted; plaintiff Nordell's Motion to Reconsider the Court's February 8, 1991 Order denying Nordell's Motion to Vacate is denied; Third Party defendant Veronex's Motion to Vacate is denied.

The Court finds defendant Triton's Motion to Confirm timely and properly made within this district under 9 U.S.C. § 9. The arbitration panel's Clarification and Resolution of Arbitration Award satisfactorily resolves this Courts' questions regarding the Award.

As to plaintiff Nordell's Motion for Reconsideration, the Court reiterates its findings of February 8, 1991 that the arbitration panel did not exceed its powers and was not partial. Furthermore, the Panel's use of its equitable power to restructure the agreement between the parties was both reasonable and legitimate. Nordell has failed to provide any new evidence or authority to suggest otherwise.

In the Arbitrators' Resolution and Clarification of Award the Panel found third party defendant Veronex to be the "alter-ego and controlling entity of Nordell in the inducement, negotiation and performance of the [ENIM] contract." The Panel also made a specific finding that "both corporations acted interchangeably as principals or agents of each." The Court accepts the Panel's finding of alter-ego and agency as sufficient to allow the Award to stand against Nordell's parent company Veronex.

This Court has previously stated, if any reasonable theory for granting relief exists, this Court will not vacate the award. *Sobel v. Hertz, Warner & Co.*, 469 F.2d 1211 (2nd Cir. 1972). In light of the fact that Nordell is a wholly owned subsidiary of Veronex; the conduct of the parties at the arbitration proceedings; and evidence that Veronex ratified the Joint Operating Agreement and thereby consented to arbitration, the Court finds the Panel's findings of alter-ego and agency to be factually well supported. A finding of alter-ego by an arbitration panel is properly confirmed if sufficiently supported by the facts. *International Bhd. of Elec. Workers v. Hyland Wilson Elec. Contractors, Inc.*, 689 F.Supp. 995 (N.D. Cal. 1987), *rev'd on other grounds*, 881 F.2d 820 (9th Cir. 1989).

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: November 25, 1991

/s/ Edward Rafeedie
EDWARD RAFEEDIE
United States
District Judge

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff, vs. TRITON INDONESIA, INC., et. al., Defendants.	No. CV 90-6894-ER ORDER REMANDING ISSUES TO ARBITRATION PANEL (Filed Feb. 6, 1991)

The Court, having read and considered the motion, opposition and reply, and having considered all timely filed exhibits and documents, HEREBY ORDERS plaintiff Nordell's motion to vacate arbitration award is denied, defendant Triton's motion to confirm arbitration award is stayed, and the following issues are remanded to the original arbitration panel for resolution and/or clarification:

[1] legal effect of the original agreements and the 1989 amendments,

[2] Nordell's obligation to pay cash calls, and

[3] the reasons for granting relief against Veronex.

It is the Court's opinion that the Arbitration Panel did not exceed its powers. If any reasonable theory for granting the relief given exists, this Court will not vacate the award. *Sobel v. Hertz, Warner & Co.*, 469 F.2d 1211 (2nd

Cir. 1972). The award of fees and expenses associated with the arbitration, both attorney and non-attorney, appears to be within the panel's authority under Commercial Arbitration Rule 49. Rule 49 permits the panel to award ALL expenses of arbitration against any party. Nordell also contends the Panel exceeded its authority by granting punitive damages. The Court believes the Panel did not award punitive damages for bad faith breach of contract, but instead awarded them, if at all, because of Nordell's willful violation of the panel's interim order. Furthermore, during the arbitration Nordell submitted a brief which strongly urged the Panel to invoke its inherent equitable powers to grant punitive damages. Nordell can not be permitted to now argue the Panel exceeded its power by doing something Nordell requested the Panel to do.

Nordell next argues the panel exceeded its powers by restructuring the contractual relationship between the parties. However, there appears at least one reasonable basis for this action by the panel. Both parties were requesting equitable relief in the form of complete forfeiture of the other party's interest. The reasonable inference to be drawn from the Award is the panel attempted to strike a compromise that would permit both parties to maintain an interest in the project without unduly hindering the future administration and management of the project. It is the Court's belief the arrangement created by the award was within the broad authority conferred on the panel by the parties when they requested the drastic remedy of forfeiture. It is not the function of this Court to second guess the panel's exercise of its authority. *John T.*

Brady Co. v. Form-Eze Systems, Inc., 623 F.2d 261, 264 (2nd Cir. 1980), *cert. denied*, 449 U.S. 1062, 101 S.Ct. 786.

Nordell also contends the panel exceeded its authority by rendering an award inconsistent with agreements. The Court agrees the finding that Triton was operator during the interim period is inconsistent with the agreements. However, this does not appear to be material. On the other hand, there is no inconsistency with the finding that Triton no longer needs to make cash calls upon itself. This appears consistent with the panel's restructuring of the relationship between the parties.

It is the Court's opinion that the arbitration panel was not partial. Nordell bears the burden of proving "evident partiality" in this motion. The Award standing alone is not so unfair as to demonstrate evident impartiality. The Court has just explained there are reasonable theories upon which the Panel could have relied in making its Award. Therefore, the Award is not so inherently unfair as to permit the only explanation of partiality.

It is within the Court's authority to order remand when it appears the panel imperfectly exercised its powers. In the Award which is before the Court, it appears the Panel imperfectly exercised its powers. The Award fails to sufficiently delineate the new relationship between the parties. There is no guidance as to the continuing effect of the original agreements nor whether Nordell has continuing obligations to pay cash calls. Additionally, the Award does not explain the legal effect of the August, 1989 agreements. Finally, there appears to be no basis for granting relief against Veronex, Nordell's parent company. It is the Court's opinion that these

issues, ([1] legal effect of the original agreements and the 1989 amendments, [2] Nordell's obligation to pay cash calls, and [3] reasons for granting relief against Veronex) should be remanded to the Panel for clarification. In all other respects, the Award appears to be within the Panel's authority and the Court will not vacate the Award.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this order on counsel for the parties in this matter.

DATED: February 6, 1991.

/s/ Edward Rafeedie
EDWARD RAFEEDIE
United States
District Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORDELL INTERNATIONAL RESOURCES, LTD. Plaintiff-Counter-Defendant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD., Defendants-Counter-Plaintiffs-Third Party Plaintiffs-Appellees. v. VERONEX RESOURCES LTD., Third-party-defendant-Appellant.	)	No. 92-55058 D.C. No. CV-90-6894-ER
NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD. Defendants-Counter-Plaintiffs-Third Party-Plaintiffs-Appellees.	)	No. 92-55433 D.C. No. CV-90-6894-ER

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant, VERONEX RESOURCES LTD., Third-Party-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD.	No. 92-55434 D.C. No. CV-90-6894-ER ORDER (Filed Sep. 21, 1993)

Before: WALLACE, Chief Judge; O'SCANNLAIN and FERNANDEZ, Circuit Judges.

Appellees' motion for leave to file objection is DENIED.

Appellees' petition for rehearing is DENIED.

The panel has voted to deny appellants' petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en banc suggestion, and no judge of the court has requested a vote on it.

Appellants' petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

APPENDIX F

TRITON ENERGY CORPORATION
INTEROFFICE COMMUNICATION

CONFIDENTIAL

TO: David E. Gore
Joe Ciavarra
Rob Puetz

September 25, 1989

FROM: Michael A. Calloway

RE: INDONESIAN OPERATIONS – JAKARTA AND ENIM

Since my return from Indonesia there have been discussions regarding my observations of our activity with Frank Cheatham, Rob Puetz, and Joe Ciavarra. The following tries to capsule these observations for a permanent record. Some of the following statements include recommendations to increase our internal control which were developed after my return. These have not been discussed with our Indonesian personnel. I felt it more appropriate to first put them on the table with you.

1. In Indonesia, I found myself in a country of state supported corruption. There, in order to do business you apparently have to adopt the standards of Indonesia.

2. I was told that we pay between $1,400 and $1,900 per month just to get our invoice to Pertamina paid. We have an Indonesian employee in Jakarta who takes these people out to lunch and pays them cash. Naturally, we do not get receipts for this type of payment, so how do we know what it really costs us for the invoice to be paid.

3. We must pay people in customs in order to get our equipment off the dock so that it can be used in operations. Again, cash payments with no receipt so how do you know what is real.

4. We even pay BPKP auditors working on the audit of our records to determine what is cost recoverable. We apparently pay for their travel and expenses when they go to Sumatra (possibly understandable) and when they go to the United States to visit Nordell's or Triton's offices. So much goes to the assisting auditors, to the lead auditor, to his boss, etc.

   What is worse, and this is extremely confidential, is that we paid the auditors in order to have their audit exceptions taken care of. Instead of the $600,000 of audit exceptions, we paid them approximately $150,000 to $200,000. This part is particularly bad to me. I had hoped that at least the Indonesian auditors were honest. But, I was told time and again that every Indonesian will steal from you.

5. I do not know if we participate in this, but I was told that Pertamina officials also get plane tickets, get college educations for their children, etc.

6. Then, after these payments are made, you must figure out a creative way to document these payments in order for them to be cost recoverable. Unless you are the one on the scene at the time, it is very difficult, perhaps impossible, to tell a real transaction from one that has been faked for cost recovery purposes.

7. The bid process was explained to me by one of our people in Jakarta. The way it was explained, it sounded ideal. Sealed bids; opened in front of a committee; etc. Then our employee said that this

procedure could be circumvented by talking to a contractor who could arrange to have all of the documentation provided, other company's bids included, so that the low bidder would be the company which you wanted to receive the award.

This is terrible to admit, but sometimes we may want to do this. For example, one of the fears of our people is that we will have to go out for bids, Pertamina will supply us with their approved vendor list, and the low bid received from the contractors on this list will be a "briefcase company." This is a company owned probably by a Pertamina official who has no equipment, office, or expertise. But, he was the low bidder and we will be forced to use his company. This type of situation could seriously affect our operations.

If we did decide to obtain a vendor this way, I would strongly recommend that documentation be prepared so that we know why it was done, how it was done, and who approved it. This documentation should also be prepared for any bids already awarded in this manner. If we are forced to play games, we should at least be able to tell why we did it and leave a trail to tell legitimate transactions from those which are not so legitimate.

8. The question I have heard often regarding the payoffs in Indonesia is "Does everyone have to do this or is it just Triton?" I do not believe it is only Triton. At the Petroleum Accountants Society of Dallas meeting on September 21, 1989, I had a discussion with a longtime member of Arco's audit staff. He confirmed that Arco has had the same experience in Indonesia and went on to say that they had many internal control problems in their own office in Jakarta.

9. We use contractors to provide local labor at the field location and to provide expatriate people above the level approved by Pertamina. This area concerns me. The indication I've gotten from our people is that local labor are not being paid their termination pay or overtime which they have earned and we have paid to the contractor. A laborer who complains will go before the "Manpower" people in Palembang where they will have no chance because the contractor has paid off the officials to look the other way. The contractor is probably not paying the laborers' income taxes to the government. The same is true of the expat people. Each month we pay the contractor, as an example, $3,000 (base pay) + $2,000 (work permits, taxes, etc.) + $150 (5% fee on base pay). I do not believe the contractor is paying the expat's income taxes to the government. I have been assured that Triton has no liability since we have paid what we were supposed to and it is the contractor's responsibility from there on. I do not know if this is true. Perhaps Triton is in the clear, but what about the expats? I do not know.

10. This situation could provide the contractor with a large supply of cash with which to buy business from Triton. I am not saying that this is happening, but the cash is very probably available and the business climate is certainly the type to encourage this type of activity.

    Normally, I would like to perform vendor audits where I suspect something of this nature: either not paying people what they have earned and for which we have paid, or possible kickbacks to Triton employees. In the States, failure to pay employee overtime or benefits that we have paid to the vendor would be an automatic exception with a

demand for repayment to Triton. In extremely bad cases, the contractor should be cut off. People that I trust in our offices indicate that this type of audit could adversely affect our operations. The labor could be pulled out and we could end up with a worse vendor. I am assured that the labor contractor we have is probably the best in Indonesia and even without the overtime and benefits due them, the laborers are better off than the 40% of Indonesians who are never employed.

11. The possible kickbacks are a different story. We have to try to do everything possible to prevent this situation from occuring. We have to have honest employees in responsible positions. They have to be above reproach or suspicion. We should also send letters annually to our vendors saying that we will supply business to contractors based on quality, service, and price and for no other reason. They should be encouraged to notify Dallas if any attempt is made to sell business by our employees and they should be assured that current and future business with Triton will not be hurt if they do so. This type of "Fair and Consistent Dealings" letter is not unusual in the industry and may be useful in protecting Triton from Triton employees. I don't want to sound like a policeman, but if we can't keep from playing games with Pertamina and customs and other government agencies, and we can't make sure that our contractors pay their people or their taxes, at least we should try everything possible to make sure we protect Triton from our own people.

12. Internal controls are a starting place. Internal controls in the States are based on the premise that one out of two people is honest. This is not necessarily the case in Indonesia where "every Indonesian will

steal from you if given the opportunity" and the business realities could be tempting enough for some expats to do the same. More extreme measures are necessary. We have to plant some doubt in the minds of our people about how safe and accepted corruption is in Indonesia. Even a remote possibility of being reported to Dallas is better from our standpoint than what we have now. We should do everything possible to check the background of prospective expats, full time or contract, before they are sent to Indonesia. I don't mean calling just the references shown on their resumes, but calling other people who may know them and the circumstances under which they left previous employers. I believe Dallas should do this background check and have the final say before an expat is sent to or hired by our Jakarta office.

Personnel files on all contract expats should be maintained in Dallas, and should include their job assignments, responsibilities, signature authorizations, approval limits, and periodic evaluations. (Basically, who do they report to, what are they supposed to be doing, how are they supposed to do it, how is it paid for, who approves what, and how well they are doing their job.)

13. Expats, both Triton and contract, and local hires should be required to sign a letter annually regarding their knowledge of Triton employees' conflicts of interest; irregularities; or fraudulent activity. These letters should be held confidential from other employees in Indonesia and sent to me or someone else in Dallas. There should be no possibility of reprisal against a whistle blower trying to do the right thing. Allegations should be investigated. These letters should be specific regarding consequences for failure to disclose knowledge of such

activities. It may sound like it, but I am not advocating "Big Brother." This procedure is merely designed to cause doubt about how safe it is to participate in activities that are detrimental to Triton. Those employees who do nothing wrong will realize the benefit and the necessity of this type of letter. They will understand that we are just trying to maintain control and will have nothing to fear. Those who are tempted to take a chance may realize it is not as safe as it may have been perceived and object to this procedure. Also, they may be convinced that taking a chance is no longer prudent or profitable.

Extreme situations require extreme measures.

14. I had indications that some of the Expat contract people were not very capable individuals. I was told one was more interested in staying on the phone in Jakarta acting as Mr. McAdoo's stockbroker than in assisting in the field operations at ENIM. Apparently this person,whose name I do not know, only made one trip to ENIM. I was also told that Joe Pope, contract wireline specialist, was not worth what we were paying him. I believe he was Mr. McAdoo's roommate at Texas Tech. Technical people would be better equipped than I to make a determination of these allegations.

15. When I attended the OPCOM in Bangkok, the Nordell people spent a good deal of time discussing the variances between production and water injection projections versus actuals. They wanted to know if the projections were only for Pertamina's sake. The implication being that the non-operators should have projections of what we really think is going to be possible so that adequate plans could be made. They have a legitimate point. They also asked what roadblocks were ahead after the three rigs were

received. They asked what were we doing now to head off those roadblocks. Another legitimate point. Are we planning the way we should be?

16. When I met Mr. McAdoo in Jakarta, this was one area that I asked him about. Were we planning the most optimum approach to which wells should be utilized for injection and which should be produced? Did we have a logical plan that would best utilize the new equipment and was that information being communicated to Barry Jones in the field? I was assured by Mr. McAdoo that this was done. During my stay at ENIM, I got the opinion that this was not the case.

17. Mr. Jones impressed me while I was at ENIM. He is putting together a fine facility. He is "making do" in any way he can. They have reclaimed tanks from the jungle; fabricated new tanks from steel available in Indonesia; fabricated separators from drainage conduits; constructed camp facilities for the contract labor (which we need to bill the contractor for); constructed facilities for injection, etc.; constructed shop facilities, made great improvements in security and availability of warehouse items (at least they look good compared with what I had heard they used to be like); cleared all locations so they are ready for rigs to be moved on; begun central generating and distribution of electricity; improved roads; planned ahead for the rainy season and staged materials in place for numerous projects which can be done when it is wet. Those projects best done when the weather is good have been aggressively worked on. Those which can wait, have been planned and prepared for. His welders even fabricate their own mills to use on downhole junk rather than trying to purchase them.

I was amazed at this man's achievements, organization, planning, and effort.

I was also concerned about what would happen if a truck were to hit him and put him in the hospital. I had heard that he had not taken any time off since last December. I could see that he worked horrible hours, probably 16 to 18 hours a day or more. He told me that he had taken some time off not too long ago and that Russ Hopley had filled in for him. Things had not fallen apart and I believe he realized that it would be possible to take off more in the future. I believe Mr. Jones is very honest. However, one basic internal control is that people must take their vacations and get time off. Many times frauds have been discovered by something coming across a person's desk while he was taking time off. All employees should be required to do so. I later found out that Mr. McAdoo had basically ordered him to take some time off. This was probably a good move. Apparently, the recommendation had been made that Mr. Jones should have some help in the form of an office manager or administrative manager to take some of the burden off of him. I was told that he had resisted this idea but on the last afternoon at ENIM he told Pat Murphy and me that he was now in favor of the idea. He wanted the Jakarta office to locate someone to fill the position. Mr. McAdoo and Mr. Keever seemed surprised to hear of this turnaround when I talked to them.

18. I believe that Mr. Jones is doing everything he knows how to do. The facilities being assembled and the progress being made support this belief. I do not believe that he has gotten the technical assistance as far as proper development of the reserves goes or administrative assistance that he needs. Again, technical people from Dallas would be better equipped to determine the adequacy of assistance being provided to the field operations.

From the administrative side, Pat Murphy basically said that either he or Phil Keever should visit the field every month just to provide that type of help from now on. Mr. Jones is betting the future on Jack Monk, the new engineering manager. He feels that this man will work with him and provide the technical help necessary as soon as Mr. Monk gets his feet on the ground.

19. When I returned from ENIM, I heard of several job announcements made by Mr. McAdoo which should have a positive effect. Mr. Monk was announced as the Engineering Manager and Russ Hopley was to be responsible for contracts and purchasing where he has previous experience. The latter helps Mr. Keever who had been responsible for those areas.

20. The visits to Jakarta and ENIM by people from Dallas, technical and administrative should continue. These visits serve to assist our people in Indonesia, monitor progress and activity, and provide reinforcement of the importance of this operation.

As a quick summary, since I arrived at Triton everyone has been expressing concern for our Indonesian operation. After this trip, I understand why. The business climate is one that dictates concern. With so much corruption accepted in this country, and so much investment required to make this a productive operation, I do not think we can spare the effort to provide constant control, monitoring, and scrutiny.

/s/ Michael A. Calloway
Michael A. Calloway

APPENDIX G

MICHAEL CALLAWAY SWORN AND EXAMINED

22-10-90

MR ARMOUR:

Q. Callaway what is your full name and address please?

A. Michael Callaway. 1067 Fernhill Road, Dallas, Texas.

MR GRZANKA:

Q. Mr Callaway are you currently employed?

A. Yes I am.

Q. Where?

A. Triton Energy Corporation, Dallas.

Q. What is your position?

A. Director of internal audit.

Q. Have you spent any time with respect to the ENIM project since the summer of 1989?

A. Yes I have.

Q. How much time?

A. Total time.

Q. Give me a guesstimate?

A. 15 weeks.

Q. 15 total weeks as since summer of 1989. Correct?

A. Yes sir.

Q. You were here last week when Mr Poulton testified, weren't you?

A. That's correct.

Q. Did you hear his testimony when he referred to a comment that he said was made by Mr McClure, when Mr McClure said 'We have bribed Pertamina auditors in the past and we could do that again if we have to,' or words to that effect? Did you hear that testimony?

A. I didn't hear all his testimony, I am not sure I heard that part.

Q. Well you are aware that the Triton has in fact bribed Pertamina auditors. Right?

A. I am aware that a –, I am not sure I'd call it a bribe. We have paid Pertamina auditors.

Q. In fact you paid Pertamina auditors between a 150 and 200,000 to take care of, shall we say, exceptions to cost recovery items. Is that the truth?

A. Is correct.

Q. I show you a copy of a document marked Exhibit 19.

EXHIBIT SHOWN

Can you tell us what Exhibit '19' is?

A. It's a letter that I wrote in September 1989 after a one week visit to Jakarta.

Q. What did you write?

A. It is more or less to capture the thoughts and recommendations that I had at that time of my return to Dallas. More or less a trip report is what you might call it.

Q. What happened to the original of this document?

A. It was destroyed.

Q. Who destroyed it?

A. I did.

Q. Why did you destroy it?

A. It was distributed to the people they were shown the report, after my boss, they both read it, he said 'collect the copies and have them destroyed,' so I did.

Q. Did he say why you want them all destroyed?

A. No.

Q. Now you see the check next to Mr Ciavarra's name? Does that mean anything to you?

A. I assume that means it's his copy.

Q. Can you recognize the handwriting on the report?

A. I recognize my signature, thta's [sic] all.

Q. Did you know the others?

A. I did not.

Q. Did you write any notations on the last page, since the first of the fiscal year?

A. No I did not.

Q. I call your attention to paragraph 4. It reads. 'We', and by the way, 'we' are presumably Triton Right?

A. Is correct.

Q. We even paid BPKP auditors working on the audit of our records to determine what is cost recoverable. Is a true statement, right?

A. They are working on the audit to determine what's cost recoverable and we have paid the auditors, that is true.

Q. You apparently paid for their travel expenses when they go to Sumatra, possibly understandable and when they go to the United States to visit Nordell or Triton offices, again that's true when you wrote it?

A. True.

Q. So much goes to the assisting auditors to the legal auditors to . . . – . . . that's true also. Right?

A. True. As I understand it. It is true.

Q. The next paragraph, 'What is worst and this is extremely confidential, is that we paid the auditors in order to have their audit exceptions taken care of. Instead of the $600,000 of audit exceptions we paid them approximately $150,000 to $200,000. Am I reading that right?

A. You are.

Q. Triton basically paid a one hundred and fifty to two hundred thousand dollars to Pertamina auditors to have them forget about it, if you will, $600,000 audit exceptions?

A. As I understood the situation, that was correct.

Q. Now this is a part down here I find particularly intriguing. Paragraph 6, 'Then after these payments are made you must figure out a creative way to document these payments in order for them to be cost recoverable.' Are you saying that the bribes themselves become cost recoverable by papering them over?

MR FLEGLE: Before you answer tht [sic]. Where's 'bribes' in there? There are facilitating payments allowed in. . . . Act, and this witness is not an attorney and I object you using the word 'bribe' and unless it's in here unless that's agreed. As a matter of fact Your Honour –.

MR GRZANKA; He already answered bribed. The first question I asked, bribed, he said, 'yes'.

MR ARMOUR: He didn't say yes. Okay qualify it. . . .

MR WALKER: I know what he said, he said, 'If we paid Pertamina auditors. I am not sure I would call it a bribe'.

MR ARMOUR: That's what he said.

FLEGLE; Just so the records is clear,. . . . the cost but the $600,000 is Nordell's, what happened with Pertamina auditors went to Nordell in the summer of 1989.

MR GRZANKA:

Q Did Nordell tell Triton to pay up the auditors for Nordell. . . . ?

A. No, I didn't talk to Nordell.

Q. Did anybody in Triton ever talk to Nordell about this situation?

A. No.

Q. So that to your knowledge Nordell was never told about this, were they?

A. I have no knowledge on that.

Q. If you wouldn't call this a bribe, what would you call it?

A. I think Mr Flegle characterized it correctly as a facilitating payment.

Q. What do you mean to say here, this part is particularly bad for me'. I hope that at least the Indonesian orders were honest. Were you implying the Indonesian auditors were not honest?

A. That's correct.

Q. So you are understood that in this transaction the Indonesian auditors were doing a dishonest act. Right?

A. That's correct.

Q. Let's go down to paragraph 6 again. 'Is it my understanding that after one of these expediting payments shall we say was made, an invoice was created, a fraudulent invoice? Is that right?

A. That's correct.

Q. And the invoice then was submitted to Pertamina to be cost recoverable. Is that right?

A. That's not correct.

Q. That's not true. Okay. What do you mean by this one here, 'You must figure out a creative way to document those payments in order for them to be cost recoverable'?

A. I meant that the charge had been charged to ENIM then you would have to figure out a way to make it cost recoverable. This payment was not charged to ENIM.

Q. Were there any invoices prepared to cover this $150,000 and $200,000?

A. They were I believe there was, yes.

Q. What did they say?

A. To my understanding it was an invoice from Mr Siouffi's company for acquisition of data on areas in the AMI.

Q. Acquisition of data. I am intrigued by your comment about how you know that these weren't charged to ENIM and write off this last sentence here. 'Unless you are the one on the scene at the time, it is very difficult, perhaps impossible, to tell a real transaction from one that has been faked for cost recovery purposes'. What do you mean by that? –

A. . . . exactly what it says.

Q. Which means that it could be faked and you couldn't tell?

A. On my own, probably not.

Q. You know of anybody in Triton who could tell?

A. The people who were making the payments, or ordering the payments to be made.

Q. How about an auditor? Could an auditor pick up that kind of fraud?

A. It is possible.

Q. Possible? Would it have to be a regular auditor or a fraud auditor?

A. I am not sure would actually show it.

Q. Which would be more likely to show it?

A. I guess a fraud audit.

Q. Did you order a fraud audit to find out exactly how much if any of the invoices had been faked?

A. No. I did not.

Q. Why not?

A. Because in my mind there was no significant fraud going on here. There was an attempt to make things cost recoverable, in a foreign environment where that was necessary sometimes.

Q. Was it your understanding that if an item is not cost recoverable it could not go into the carry?

A. That's not correct.

Q. Did you discuss the problems reflected, if that's the proper way to call it, reflected on the paragraphs 4, 5, 6 with any of the Triton Indonesian management in Jakarta?

A. I did not.

Q. Why not?

A. This was a confidential memo to certain people in Dallas trying to stress that it was a difficult situation, difficult environment to do business in and we needed to make sure that it received proper attention from Dallas.

Q. This situation troubled you, didn't it?

A. Yes it did.

Q. Did you take any steps to correct it?

A. Yes I did.

Q. What did you do?

A. Made plans to start doing an audit as soon as possible.

Q. Did you do the audit?

A. It was to commence in February 1990.

Q. This was written in September, you waited to February to commence the audit. Is that right?

A. That's correct.

Q. Why was that?

A. Different reasons. For instance, we had an audit scheduled in Nepal. Pertamina auditors were already in our office in December and January which prevented my being thereat [sic] the same time.

Q. You didn't want to tell them about this, right?

A. More of a situation where there is no extra room and apparently they knew about it.

Q. They did? Who in Pertamina knew about it?

A. Pertamina auditors.

Q. The auditors who tooked [sic] the money?

A. Yes.

Q. How about the senior people in PBK, could any body knew about it?

A. To my understanding this goes all the way across to the President of Indonesia, since PBK works for the President.

Q. Do you know if the president of Indonesia got any money?

A. I have no idea.

Q. What were the results of this aduit [sic] started in February with respect to these problems?

A. I conducted a regular internal audit looking for internal of controls. The presence of internal of controls. We have written approximately 27, 28 preliminary audit reports. The audit in my mind is not finished because of the arbitration that was filed. We started looking at other areas as well.

Q. Did any of those preliminary reports deal with this particular problem?

A. Which particular problem?

Q. There are two problems as I see. One is the problem of paying to deal with audit exceptions and the other is the problem with documentation, the fake invoices. Did any of your preliminary reports deal with either of those subjects?

A. Not that I recall.

Q. Have you any personal contact with KPMG, the Peat Marwick folks? Do you have any contact with anybody in KPMG in the course of this year?

A. I have sat in on various meetings that they have attended.

Q. To the best of your knowledge have they ever been asked to look into this problem?

A. To the best of my knowledge, no they have not.

Q. Have they even been told about this particular problem down here, faked invoices?

A. To the best of my knowledge, they have not.

Q. In connection with your own activities at Triton Jakarta, this past year invoices have been paid?

A. Yes I have.

Q. In connection with your own activities, sir, at Triton Jakarta, this past year, have you made any attempt to ascertain which invoices if any have been paid?

A. Yes, I have.

Q. Okay, what have you found?

A. In connection with the purchases of rigs, there had been invoices that have been faked.

Q. Anything else? Do you – situation?

A. Not to my knowledge.

Q. How do you go about finding out if the invoice is fake or not?

A. It's very difficult.

Q. How does Mike Callaway go about trying to –?

A. When I ran into it, it was on the home office billings. Things that had been charged, did not agree with the invoices that I saw in Jakarta.

Q. In what respect?

A. We're buying equipment in Dallas. We're also buying equipment in Jakarta looked like the same equipment.

Q. Did you make any attempt to look at the inventory in transit problem that Mr Poulton's working at?

A. Personally, no.

Q. That was something you left up to KPMG?

A. No, I had an assisting auditor working on that area.

Q. Who is that?

A. A consultant named Jack O'neil.

Q. Did you advise Mr O'neil about this potential problem? This problem down here, the fake invoices?

A. I don't recall if I did or not.

Q. This inventory and transit, – conceptually could there be any difference between a high inventory in transit balance and the fake invoices?

A. Conceptually, it's possible.

Q. But it does, you know, either you or anybody in Triton will conduct the –, is that right?

A. That's correct.

Q. I move the introduction of 19 and pass the witness . . .

MR FLEGLE:

Q. Mr Callaway, just a couple of questions. The question is, when is it that you collected the copies and destroyed them?

A. Within two days of the date of the memo.

Q. That's sometime in September 1989?

A. That's correct.

Q. Have you or are you in the process of internal reviews on subjects that we were discussed in this memo?

A. That's correct.

Q. The paragraph four, we discussed on the first page, which says 'Instead of the $600,000 in audit exceptions', those were audit exceptions of what kind of audit. What would they notice, do you know?

A. The exceptions resulted from the Nordell audit in Vancouver. I believe this was referred as Nordell tax audit where Pertamina and BBKB auditors to the exception to home office charges and rent, I mean, technical services, things like that and required taxes to be paid on those.

Q. Oh, I see. At the top of the second page, you were asked questions about the Indonesian auditors. You said 'I hope at least the Indonesian auditors were honest'. Which Indonesian auditors were you talking about at in that sentence?

A. Pertamina, BBKB.

Q. Now, in terms of these payments in paragraph four, the first page of Claimant's '90'. Mr Callaway, how is an oil with the payments on paragraph four that carry or net project investment as it relates to the contract between Nordell and Triton?

A. To my understanding, it did not affect either one on the carry, or on the project investment.

MR ARMOUR:

Q. What was the date of that audit in Vancouver?

A. June, I believe of 1989.

MR GRZANKA:

Q. Just one brief question. Do you know of any of the Triton's costs for expenses in connection with this arbitration have been added to the joint account?

A. I have no personal knowledge right now of that.

Q. Have you seen, you say you don't have any personal knowledge. Have you seen any records which indicate there has been?

A. The joint account, I don't know.

MR GRUNDEM:

Q. I have some questions. You testified that some of these invoices, if I might call them phony invoices, these invoices may have gone through this Dallas fixed asset. Did you not testify that there might have?

A. I testified that I found some problems with fake invoices relating to assets that were purchased by Dallas.

Q. And some of these ones were – and it might have been the double ldeger [sic], or double transactions go to P.T. to the – who elst [sic] they had in Dallas, right?

A. That's correct.

Q. Now, it happens I think that if you add up all these items on the capital assets for Dallas, on – 106 credits, and subtract the credits it comes out it comes out to $150,000, approximately?

A. I believe $150,000 credit or $120,000 credit.

Q. Well, if it is, then I added wrong then I –.

A. Okay.

Q. If it comes out to a credit, The I added wrong because and I was just wondering and if that's the case, I might – but I was just wondering if that could have been the difference?

A. It's difficult to explain something that I've been working out for quite a bit of time. But this was a way to get something cost recoverable through a P.T. company, in Indonesia, for assets that had been purchased in United States and for a period of time, there was a double charge for certain pieces of equipment, which was corrected by vendor draw, paying back the amount that he had been paid to Dallas, less his commission and that credit being passed through to Indonesia. It's very circular and I don't like it, but that's what happened, at the direction of a former employee.

Q. Well, I guess what I'm saying is that, are you saying that these payments to the auditors, Pertamina auditors has not?

A. Has nothing to do with capital assets. The things the auditors are, as I said we're not involved in the carry, they were submitted on invoice from Roland Siouffi company, for acquisition they added to AMI, area of mutual interest. Which is 40 percent Nordell, 60 per cent Triton. An invoice – I do not believe has been paid by Nordell.

MR GRZANKA:

Q. I have a couple of questions now to follow up, by me. Can you testify as a fact that no faked invoice found its way into the carry?

A. I cannot.

Q. Can you testify for a fact that no faked invoice did not impact upon net project investment?

A. I cannot.

Q. No further questions. Your Honour.

MR FLEGLE:

Q. You got this question now, Mr Callaway, in your conversation with Mr Grundem just now, you said something about the 'double invoices' and so forth, were part of the programme [sic] or something being led by a former Triton employee. Who was that former employee?

MR GRZANKA:

Objection to foundation, unless he has personal knowledge, I'm going to get hearsay here.

MR ARMOUR:

Q. If you know. If you don't know who it was, say so.

A. I've seen correspondence.

Q. You saw his correspondence?

A. Yes, sir.

MR GRZANKA: I have no trouble with him saying, what correspondence he saw, and I don't know that he knows who really . . .

MR FLEGLE:

Q. What did you see?

A. I saw a letter from Richard McAdoo to Dallas saying 'I realise [sic] you guys think this is crazy, but this is the way you have to do it in Indonesia'.

Q. Do you have that letter?

A. Personally on me, I do not.

MR ARMOUR: Mr Callaway, I have a question.

Q. Who gave the instructions to make these payments through the Pertamina auditorss [sic], if you know, inthe [sic] Jakarta office?

A. I have only an understanding, Sir. I don't know for a fact but it's my understanding that it was worked out by Richard McAdoo and Roland Siouffi. As a settlement to the auditor.

Q. And that time, what was Mr McAdoo's position?

A. He's general manager.

Q. And what was Mr Siouffi's position?

A. I'm not sure I know what his position is. He's – in my mind, he's only royalty, Your Honour, but he has a lot more power than that.

MR FLEGLE: Officially he was a contract consultant.

MR ARMOUR: But not an officer?

MR FLEGLE: No, Sir. He's never been an officer or employee of Triton.

MR PYBURN: Or a directors?

MR FLEGLE: No Sir. Never been a director of Triton Indonesia. Director of Nordell, an officer of Nordell.

MR ARMOUR: He's still a director?

MR FLEGLE: No.

MR ARMOUR: No, he's not.

MR WALKER: He runs the project for Triton.

MR ARMOUR:

Q. On page two you made a statement, 'I hope that at least Indonesian auditors were honest'. Are you inferring there that some of the other auditors may not be?

A. No, Sir.

Q. Or less than fully honest in their work?

A. I was implying that I – if every Indonesian will steal from you, I at least hoped that the auditors were honest.

Q. We may have further question on this. Will he be available?

MR FLEGLE: Yes, Your Honour. He's going to be here until, the last question is answered.

We'll meet tomorrow at nine o'clock.

ARBITRATION ADJOURNED AT 5:20 PM UNTIL TUESDAY, OCTOBER 23, 1990 AT 9:00 AM.

APPENDIX H

IN THE MATTER OF AN ARBITRATION BETWEEN:

NORDELL INTERNATIONAL RESOURCES LIMITED

Claimant

-v-

TRITON INDONESIA INC.
TRITON ENERGY CORPORATION
-AND-
TRITON OIL (NZ) LIMITED

Respondents

BEFORE THE AMERICAN
ARBITRATION ASSOCIATION

Sitting at Marina Mandarin Hotel, Singapore

9 October 1990

ARBITRATORS: Messrs. G.P. ARMOUR, M.K. GRUDEM, T.D. PYBURN.

APPEARANCES:

For Claimant:
Mr. G.T. WALKER with Mr. M. GRZANKA
Mr. D. GRUNFELD

For 1st & 2nd Respondent:
Mr. J.L. FLEGLE with Ms. L.B. LATCHFORD
Mr. M. MORRIS

3rd Respondent not represented.

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012/90

RICHARD G POULTON, sworn and examined.

MR GRZANKA:

Q. Where do you reside?

A. I am currently living in Jakarta.

Q. What is your address?

A. I live at Bungur Buntu No. 2 Kama Bangka I Kemang, Jakarta, Selatan.

Q. Mr Poulton currently you are employed?

A. Yes I am.

Q. By whom?

A. Price Waterhouse, Siddik Konsultan P.T.

Q. Where are they located?

A. They are located in Jakarta, Seletan. They are the consulting division of Price Waterhouse in Indonesia.

Q. What is your title?

MR ARMOUR; [sic] Why don't we begin with the first question?

MR GRZANKA:

Q. Mr Poulton you are currently employed?

A. Yes.

Q. By whom?

A. Price Waterhouse Siddik Konsultan P.T. which is an Indonesian branch of Price Waterhouse qualified to do business in Indonesia.

Q. What is your title and job description?

A. I am a Senior Consultant with Price Waterhouse.

Q. What do your duties entail?

A. Providing business consulting to Price Waterhouse clients.

Q. Do your duties involve audit?

A. Yes I am currently writing an audit procedures manual from Maxes.

Q. Who is Maxes?

A. Maxes is a. . . . space oil company formerly known as Diamond Shamrock which has and operates a concession called the Southeast Sumatra Concession.

Q. How long have you been employed by Price Waterhouse?

A. Approximately three months.

Q. Where were you employed prior to your tenure at Price Waterhouse?

A. I was employed by Triton Indonesia through an Indonesian company called P.T.Budi Arta Sakti.

MR ARMOUR:

Q. Mr Poulton wait a minute. You were employed by Triton?

A. Originally when I came to work on Triton's behalf I was under contract to Triton, that contract was terminated effective June 1, 1989. Subsequently I was engaged under a service agreement through an Indonesian company named TT Budi Arta Sakti.

Q. Why was that raised at . . . ?

A. In truth I believe that it was done to comply with the manpower restrictions on Triton as far as the number of ex patriates that they could have on their payroll, but it was never really fully discussed with me.

Q. When did you stop work . . .

MR FLEGLE: Your Honour, I guess if it was never fully discussed I seek leave to strike the answer since the witness doesn't have the information to answer the question by his own admission.

MR GRZANKA: The fact that he wasn't . . . doesn't mean he can't have any knowledge of the general circumstances surrounding what the custom and practice is in the industry.

MR FLEGLE: Well, that is a different question, I think, Your Honour, and I think the question of this witness was why was this arrangement made. I guess, implying that Triton had a reason in asking this witness for it. If it is the witness' understanding and we are clear on the record that we are talking about the witness'

understanding, I don't have any problem with it. But it is different in Triton's position.

MR ARMOUR: It implies that it was a special situation with this individual.

MR GRZANKA: Well, I didn't mean to imply that.

MR ARMOUR: That is the way it will look on paper. So why don't you rephrase your question.

MR GRZANKA:

Q. Were you aware of similar situations?

A. Yes, there were various people that worked on Triton Indonesia's project in Indonesia through PT Budi Arta Sakti. Six or seven at least.

Q. When did you say that your contract with Triton itself actually terminated?

A. June 1, 1989.

Q. When did your contract with PT Budi start?

A. Well, I was never really under contract to PT Budi. The way that I understand it was that Triton executed a service agreement between Triton Indonesia and PT Budi Arta Sakti. I do not have a copy of that service agreement.

Q. But is it fair to say that you started working for PT Budi essentially the day after your contract with Triton terminated?

A. Yes, that is correct.

Q. Were you [sic] job duties any different with respect to the operations of your new project while you worked for Triton, immediately before you left Triton and immediately when you started working for PT Budi?

A. In terms of day to day working, no.

MR ARMOUR: Can we just pause for a minute?

MR GRZANKA:

Q. We were talking about the changeover from Triton to PT Budi. Were you [sic] job duties any different from the day you left Triton to the day you started with PT Budi?

A. From a day to day operations standpoint, no, but I would point out that in my termination letter it was stated that my duties under my contract with Triton had been fulfilled. I did take on more accounting type responsibilities as opposed to systems work.

Q. What basically were your accounting responsibilities from, say, June 2 of 1989 on at Triton?

A. I had responsibility for, you know gathering invoices – original invoices to send to the field to use for pricing inventory. I was responsible for the reconstruction of the fixed asset accounts and accounting for inventories in general.

Q. And what were your job duties while you were at Triton?

A. During that time that I was actually under contract with Triton I oversaw and participated in the physical inventory of the warehouse materials at the project site at Kampong Minyak.

Q. When did you start with Triton? When did your contract with Triton commence?

A. 15 March 1989.

Q. By whom were you employed immediately prior to 15 March 1989?

A. Reedy and Bates Corporation.

Q. What did they do?

A. Primarily an offshore drilling contractor but they also had a very substantial exploration production division, a pipeline construction division, a coal division and a research and development division.

Q. How long were [sic] at Reedy and Bates?

A. I spent 13 years with Reedy and Bates.

Q. I presume that over the course of those 13 years your title and job responsibilities changed?

A. Yes, they did.

Q. Could you basically summarize your history, employment history, at Reedy and Bates for us, please?

A. Yes. I was employed by Reedy and Bates August 1 1975 to establish an internal audit function for that company. I was subsequently made manager of internal audit, approximately 2 years after joining Reedy and Bates, and approximately 1981 I was promoted to director of internal audit for Reedy and Bates. In conjunction with Reedy and Bates restructuring and down-sizing, my staff was eliminated and I again took on the title of internal auditor being the sole internal auditor for Reedy and Bates Corporation.

Q. Where did you work immediately prior to August of 1975?

A. Price Waterhouse US firm.

Q. How long were you there?

A. Approximately 3 years.

Q. So that would take us back to approximately 1972?

A. Yes.

Q. What were your job duties there?

A. I was a senior auditor for Price Waterhouse in the New Orleans office.

Q. Where were you employed prior to 1972?

A. I was in the US army.

Q. Are you a college graduate?

A. Yes, I am.

Q. From where?

A. California State College, Long Beach.

Q. What year did you graduate?

A. 1967.

Q. Did you graduate with honors?

A. Yes, I did. I graduated cum . . .

Q. Are you a licensed certified public accountant?

A. I am a certified public accountant in the state of California and the state of Oklahoma.

Q. Do you belong to any professional associations?

A. At this time, you know, I have allowed those to lapse but I have been a member of the American Institute of Certified Public Accountants and the American Institute of Internal Auditors.

Q. Are we up to 51, Mr Pyburn?

MR PYBURN:

A. That's right. Correct.

MR GRZANKA:

Q. I would like to mark as exhibit 51, copy of Mr Poulton's curriculum vitae.

Mr Poulton, I show you exhibit 51. Can you tell me what it is?

A. It is my curriculum vitae which I used in my most current job search.

Q. When did you prepare this particular curriculum vitae?

A. May of 19 – May of 1990.

Q. Does this accurately reflect your employment history through that date?

A. Yes, I believe it does.

Q. I admit exhibit 51 into evidence.

MR FLEGLE: No objection, Your Honour.

MR ARMOUR: So admitted.

EXHIBIT 51 . . . CURRICULUM VITAE

MR GRZANKA:

Q. Let's go back to your – do you know a person by the name of Eric Vaughan?

A. Yes, I do.

Q. Did you ever work with him?

A. Yes, I have. Eric Vaughan was a subordinate to me when I was the director of audit at Reedy and Bates. Subsequently I worked with Eric Vaughan on audit – cut-off audit related to the farm out agreement between Nordell and Triton.

Q. To the best of your knowledge did Mr Vaughan provide Triton with his working papers that were generated from that particular audit?

A. He did. A complete set of his working papers. I might add, prior to clearing them with his client.

Q. How did you come to work for Triton?

A. Mr Vaughan had a contract with Nordell or Veronex to do this cut-off work. It was more work than he felt that he could handle by himself. He knew that I had recently departed employment from Reedy and Bates and asked me if I would be interested in, you know, joining him in Indonesia. I was interested and I joined Mr Vaughan on that project and during the course of the audit work in Triton's offices in Jakarta Triton offered me a contract to come out and assist in straightening out the inventory and fixed asset records.

Q. So while you were auditing Triton's operations for Veronex, Triton made you a job offer. Is that right?

A. That is correct.

Q. Did you accept it immediately?

A. Almost immediately, yes. I did discuss it with Mr Vaughan. I believe that Mr Vaughan had some communication with Veronex and they had no difficulties in that so, yes, it was in a very short term that I did accept it. Within a matter of 2 to 3 days.

Q. This is in March of 1989, right?

A. This would have been in February of 1989, yes.

Q. What was your initial job title with Triton?

A. I was employed as an accounting supervisor, I believe it was. I have a copy of the contract here. I was employed as a senior accounting projects co-ordinator.

Q. What were your job duties?

A. My job duties were to develop, implement and – well, develop, implement an inventory accounting system, reconcile the physical inventories to the financial accounts and make appropriate adjustments. Basically the same responsibilities for the fixed asset accounts.

Q. At the time you started work with Triton were there any particular problems you identified as needing immediate attention?

A. Yes, the inventory and – both the inventory and the fixed asset accounts were in critical need of a great deal of attention.

Let us talk about the inventory first.

Q. What did you see as being a critical need with respect to the inventory accounts?

A. Obtain a correct, accurate physical count of the inventories. See to the pricing of those inventories and adjustments to bring the financial records into agreement with the physical stocks on hand.

Q. What were the problems with the fixed asset accounts that you envisaged?

A. Basically the fixed asset accounts did not exist other than in the financial statements. There were no supporting files as to what was included in the fixed asset accounts. There was no ongoing analysis of the fixed asset accounts. In truth, the only fixed asset records that existed were the monthly financial statements.

Q. Now were these problems problems [sic] that resulted from Nordell's lack of documentation that was completed when it was operating on the project?

A. That is correct.

Q. Were those problems exacerbated by what you – in your opinion, were those problems exacerbated by Triton's operations?

MR FLEGLE: Objection. Leading.

MR ARMOUR: Sustained.

MR GRZANKA: Does it suggest an answer? The question was, in your opinion does it. I will rephrase the question. A yes or not [sic] answer is not a leading question.

MR FLEGLE: Well, I think the question is, did you have an opinion. If that is what he wants to ask, that is fine with me.

MR GRZANKA: Well, I will reframe it.

Q. In your opinion were any of these problems exacerbated by what you saw as Triton's operations?

A. In my opinion, yes, there were things that Triton, you know, had in their procedures that, you know, did lead to a further deterioration.

Q. Can you give us some of those examples?

A. Well, the most critical example had to do with their method of paying for inventory charges and charging them into the inventory accounts. Specifically when I arrived in March of 1989 it was Triton's practice to process invoices for payment based on procurement personnel verifying receipt of goods, which is a very, very serious internal control matter.

Q. Why do you say that?

A. Well, in terms of internal control it is very critical to the concept of a segregation of duties – I am going to place it first in terms of, you know, in the United States and then I will, you know, expand, you know, on how that translates to operations in Indonesia. Critical to management control and separation of duties is that the people who are responsible for contacting vendors and making commitments for the procurement of goods are not involved in verifying receipt leading to payment for goods. In the United States this would be a very, very serious internal control matter. In a country such as Indonesia where problems with incorrect payments being invoiced for goods not received is a very, very common problem. I considered their method of approving payments prior to independent confirmation of goods to be a

gross violation of very, very basic internal control principles.

Q. Let me see if I understand what you are saying. You are saying that your concern was that the same people at Triton who were saying, "We bought this stuff", were the same people who were saying, "We received it"? Is that the problem?

A. That is correct.

Q. Did you attempt to implement procedures to correct that problem?

A. Yes, I did. In connection with the physical inventory that was conducted throughout April and May of 1989 I immediately requested that an in transit account be established as a means to control payments that had been made for goods that had not been confirmed as received by personnel in the warehouse function at Kampong Minyak independent of the procurement function.

Q. Now you were in the room yesterday when I asked Mr Murphy questions about the inventory account?

A. Yes, I was.

Q. You heard his answer that it involved basically recording movements of goods somewhere between Jakarta and Sumatra?

A. Yes, I did.

Q. What do you think of that answer?

MR ARMOUR: Of his answer?

MR GRZANKA:

Q. What do you think of Mr Murphy's answer to my question about what the inventory account really involved?

A. Well, in essence, you know, that is the truth but I think that it is, you know, an extreme over-simplification of the matter. It did not just involve, you know, materials that were moving from Jakarta to Kampong Minyak. It also – it overlooked the critical aspect of independent verification of receipted goods prior to processing payments to vendors.

Q. Now, had there been inventory in transit accounts with respect to the project before you implemented this one?

A. At some time there had been an inventory in transit account used but at the time that I arrived that account had been closed up to a zero balance and was not reflected in the financial statements.

Q. So you basically resurrected that account, is that right?

A. Resurrected that account for basically a threefold purpose. First, to address, you know, the serious serious [sic] internal control deficiency. Secondly, to provide a means to accumulate documentation to track prices for the individual line items that are included in that inventory. Third, to provide a means to cut off, in accounting terms, the book records to match with the physical inventory records.

Q. When you say "track prices", what do you mean by that?

A. Well, at the conclusion of the inventory that was completed May 31, 1989, you know, at that point I was relatively satisfied that we had a reasonable count of the physical stocks. But there was no means to apply invoices [sic] prices to those physical stocks. There was no means to price the inventory, you know, to reflect its costs on a cost basis.

Q. So in other words you couldn't tell – you knew what inventory you had but you couldn't tell how much you paid for it. Is that a fair assessment?

A. I could not match vendor prices, the prices that Triton had paid, for that inventory. Some of the inventory also included purchases that had been made by Nordell. There was no means to trace the line items in that inventory from the physical inventory to the vendor invoices to establish the correct amount paid as a means for pricing the inventory in accordance with general accepted accounting principles.

Q. Let's talk about the inventory in transit account a little bit further. What was the original balance in the account when you first saw it?

A. Zero.

Q. And did it grow – did that balance grow over time?

A. Yes, it did. The first reflection in the financial statements for the inventory in transit account was reflected in the May 31 financial statements and that balance continued to increase and I do not have the records so I cannot really provide you exact figures but I can give you a general pattern of the trend. That account

began to accumulate charges, you know, in the range of 200 to 250,000 a month from May through September of 1989 and in October of 1989 the balance roughly doubled. I am going to say between a million and two million hit that inventory in transit account in the month of October 1989.

Q. Why was that?

A. It was the result of an accrual entry.

Q. Do you know who made that accrual entry?

A. I do not, no.

Q. Do you know what types of items were included in this accrual entry?

A. I think it included both inventory type items and capital transactions and I would point out that the inventory in transit account was set up to be specifically that, an inventory in transit account. I made specific comments that it was not to include capital transactions.

Q. Why was that?

A. It was meant to be a control over inventory and part of the problems that, you know, both Nordell and Triton experienced was a blur between inventory and fixed assets, capital.

Q. Let's just backtrack a little and talk about these various accounts. Had there come a time early in your employment by Triton that an adjustment to the fixed asset account was suggested?

A. Early in my employment?

Q. Yes?

A. Yes, as part of the provisions of the farm out agreement between Nordell and Triton there were certain entries adjusting the capital accounts that were proposed in relation to certain work that Mr Vaughan and I had performed.

Q. Were there certain adjustments to the inventory account?

A. There – the inventory account itself – the warehouse inventory account itself had been adjusted in that a physical inventory was taken as of September 1, 1988. Approximately November of 1988 there was an adjustment to the inventory account taking up a shortage. I believe it was roughly three-quarters of a million dollars that was written off to reduce the inventory value with the offset being taken to the cost pool.

Q. Did you have a discussion with anyone about whether in fact that reduction should be taken to the cost pool?

A. I had very serious concerns about that reduction being taken at the cost pool from the standpoint that Triton being a new operator I felt that it was inappropriate to take that to the cost pool, that Pertomina auditors would disallow it as cost recovery and I was rather insistent that it be reversed and taken out to a balance sheet account until such time as it could be analyzed and determine what composed that adjustment.

Q. With whom did you have – did you express those concerns with anyone else at Triton?

A. Yes, I spoke extensively with Mr Keever about that particular problem, and also with Mr Murphy.

Q. What was Mr Keever's response?

A. Ultimately it was agreed and an entry was recorded to reverse that entry and to take it out of the cost pool.

Q. Do you have any information as to whether that entry was ever included in the carry?

A. That I cannot tell you.

Q. Let's go back to the October doubling, if you will, of the transit account. Did you have any concerns about that particular phenomenon?

A. I most certainly did. Which phenomenon is this, I am sorry?

Q. The doubling of the inventory in transit account of October?

A. Yes, I was, you know, very concerned. It impacted, you know, in an area where I had direct responsibility. That fact that it – you know, the fact that the source of that was an accrual created significant problems for me because being an accrual it was, you know, at least a month to two months before I would be able to actually track the invoices to determine what comprised that increase. And management, you know – Triton's management was also quite concerned about it as well.

Q. Who was?

A. Mr Keever in particular.

Q. What were his concerns as expressed to you?

A. He indicated that he was getting a great deal of you know, pressure from Dallas to get that account cleared.

Q. Did you attempt to investigate what had caused this jump in accruals in October – the jump in the inventory in transit account in October?

A. No, I had identified it with an accrual.

Q. Did you ever hit upon precisely what the accrual items were?

A. Not making up the particular entry that, you know, impacted the transit account, I was concerned about it but on the other side of the coin, as it represented an accrual I did not know whether it really represented physical goods that, you know, had been purported to have been delivered to Kampong Minyak. I could only real [sic] deal with payments that had been made. That being the point that there definitely should have been physical goods.

Q. As of October did the balance in the inventory in transit account change over time?

A. It continued to increase November, December, yes.

Q. What was that balance at about the time you left?

A. Between 4 and 5 million dollars.

Q. Do you consider that a big number for an inventory and transit account?

A. Yes, it is.

Q. Would it cause any particular audit problems?

A. Yes, it would be a red flag to an auditor.

Q. In what respect?

A. Charges in the transit account are basically pending a proper accounting, you know, as to – particularly in this case where both capital and inventory transactions were being ploughed into the account, as to whether it was inventory or whether there were fixed assets that had not been accounted for.

Q. Did you make any efforts between, say, October of 1989 and April of 1990 to reconcile the items covered in the inventory in transit account?

A. Commencing about the beginning of December that is virtually all that I worked on.

Q. Did you have discussions with other people at Triton about this particular account?

A. Yes, I did.

Q. Do you recall a discussion on March 9, 1990?

A. Very clearly.

Q. Who was present at this meeting?

A. Mr Keever, Mr Murphy, Mr Bill McClure, Mr Mike Callaway and a Mr Jack O'Neill.

Q. Who is Mr O'Neill?

A. He was a contract auditor who was engaged by Triton Energy Corporation, I believe.

Q. What was the purpose of the meeting?

A. The purpose of that meeting was to discuss a resolution of the in transit inventory account.

Q. Do you remember the substance of that meeting?

A. As I recall, Mr McClure proposed a very simplistic solution to accounting for the inventory in transit account whereby all of the inventory accounts being inventory in transit, the inventory suspense account which represented the entry that I insisted be removed from the cost pool, all be closed into the warehouse inventory account; the physical inventory that was in progress at Kampong Minyak priced and the difference between the total of all financial statement inventory accounts and the physical inventory being written off directly to the cost pool.

Q. What was your concern about that, if any?

A. I had two concerns very specifically about it. First of all, it completely overlooked a proper accounting for the capital nature transactions that had been taken in the inventory account and, secondly, the same concern that I had over the initial entry that had been written off to the cost pool that it would not pass Pertomina audit muster.

Q. Did you express those concerns at this meeting?

A. I did express that concern and Mr McClure stated that Triton had in the past bought the audit from Pertomina and that they would continue to do so to get this transaction approved by Pertomina. I have to say that I was shocked by that treatment. Having been a director of internal audit for a New York stock exchange company,

in my mind, you know, discussing as a means to implement accounting policy – and I understood the word "buy the audit" to mean bribe Pertomina auditors. To me it represented an illegal transaction, the proposal of an illegal transaction.

Q. Who made that statement again?

A. I believe that Mr McClure did but Mr Callaway, being present and being the audit management for Triton Energy – also a New York stock exchange company – I was quite surprised that he did not raise a serious objection.

Q. Was there any objection raised by anyone at that meeting to this course of conduct?

A. No.

Q. Now, you actually resigned from Triton only a few weeks later – from PT Budi only a few weeks later, is that correct?

A. It was about 7 weeks. When they proposed this plan you know, I had very serious professional concerns but at the same time, you know, I had been working on a means to clear the transactions out of in transit properly and I had hopes to, you know, continue my work and complete enough of it to, you know, prevent this from happening.

Q. Did you hope to be able to reconcile the accounts without these procedures you call "buying the audit" having to take place?

A. That was definitely my concern. Understand this, what had been proposed, you know, from my professional judgment was an illegal solution. It related to work that I had been engaged on and been working on for a year. You know, I felt definitely exposed professionally.

Q. When you left PT Budi were you fired or did you resign?

A. I resigned.

Q. Why did you resign?

A. Well, from the time that the March 9 meeting took place until early April, I returned to Kampong Minyak and continued to process journal entries to clear in transit at Mr Keever's direction, providing him weekly status reports as to what entries I had made and what progress I was making. When I returned to Jakarta on 10 April I believe it was, I determined that none of the entries, you know, that I had been sending down to Jakarta had been booked and that they were still planning to do this glossing solution to the in transit account. One other thing that transpired at Kampong Minyak, Mr McClure came and had conversation with myself and a different Barry Jones – Mr Barry Jones who was the manager at Kampong Minyak – whereby he proposed fabricating accounting source documents as a means to completely bypass the inventory accounts and reverse all of the accounting for inventory that had been prepared since Triton had taken over as operator. When I returned to Jakarta and found out that in fact they had booked none of the clearance of in transit entries, I then began to – I knew that I had to resign and it was just a matter, you know, of timing. You know, when I would resign.

Q. When you talking about fabricating of documents, what specifically are you talking about?

A. Mr McClure came and he came to Kampong Minyak and he proposed that instead of using warehouse issues, you know, as the source document for accounting for inventory issued from the warehouse whereby there is a signature by the party that receives the goods, a proper transfer of the goods to operation, that instead they would take all of the receiving documents that had been processed from inception of Triton's operatorship, cost those out, code them – which, you know, he had requested me to do the coding and I had refused. He subsequently requested Mr Barry Jones to do the coding on those receiving reports. Mr Jones and I discussed it. I had very serious objections to it because, you know, it did not really represent what happened and ultimately Mr Jones refused to participate in the scheme.

Q. When you say "code it", what do you mean?

A. That they would look at what materials had been received. They would attempt to say that it was production equipment, drilling equipment and, you know, charge it directly to those cost centers.

Q. Would the receiving documents have contained any coding originally?

A. No, none whatsoever.

Q. So let me see if I understand. What Mr McClure was proposing was to ignore the actual warehouse records about where the equipment had in fact gone, but to go back to the original documents which showed how they got to the warehouse, code in where Triton thought

they should have gone or would have gone, simply write that in and use that as the record of where they ultimately did go? Is that right?

A. Yes, that was what was ultimately proposed, yes.

Q. Did you express any concerns about this procedure to anybody at Triton?

A. Barry Jones and I discussed it extensively.

Q. How about people in Jakarta?

A. I believe that that particular scheme had been abandoned when I returned to Jakarta because Barry Jones refused to participate in it. But, you know, that was the only part that I objected to that was, you know – that procedure had been abandoned but they were still planning to close all the inventory accounts into one account and write the thing off to the cost pool. At the time I resigned I warned Mr Keever that, you know, he was in great peril were he to proceed with this ill-conceived scheme.

Q. What was your life like once you came back to Jakarta in the weeks before you actually resigned?

A. Well, it was made, you know, very evident to me that I really was not wanted around there, that – there were steps taken

* * *

APPENDIX I

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ARBITRATION • MEDIATION • MINI-TRIAL
• ELECTIONS • TRAINING

November 15, 1990

Nordell International Resources Ltd.
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and
Triton Energy Corporation; Triton
Oil (NZ) Limited

VIA FAX 72 T199 0204 90

Triton Energy Corporation
Attn: Lana B. Latchford, Esq.
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Marty Morris, Attorneys
for Triton Indonesia, et. al.
Bracewell & Patterson
500 No. Akard, #4000 Lincoln Pl.
Dallas, TX 75201-3320

Dear Parties:

The Arbitrators in the above-captioned matter have requested that additional information be submitted by Monday November 19, 1990, no later than 5 p.m. The

requested information deals with three exhibits, copies of which are enclosed for your convenience.

Exhibit ZZZ, page one (1), states " Revenue: Amount Due From Nordell (cash) 329,053." How was this amount obtained? What was paid for cost recovery and investment credit? What should be paid? Now does this exhibit tie-in with exhibit II?

On exhibit VVV, page two (2), bottom left, clarification is needed with regards to the four lines which are indicated on the enclosed copy. What, if anything has been duplicated? Please explain.

Thank you again for your cooperation and courtesy in this matter.

Sincerely,

/s/ Becky Pelo
Becky Pelo
Tribunal Administrator

cc: Gordon T. Walker, Esq. (via fax. w/ encl.)
Michael R. Grzanka, Esq. (via fax. w/ encl.)
Daniel Grunfeld, Esq. (via fax. w/ encl.)

APPENDIX J

BRACEWELL & PATTERSON

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[Additional Addresses Omitted In Printing]

November 19, 1990

Ms. Becky Pelo
American Arbitration Association
443 Shatto Place
Los Angeles, California 90020-1781

Re: AAA Case No. 72 T199 0204 90 Nordell International Resources Ltd., and Triton Energy Corporation, Triton Indonesia Inc., and Triton Oil (N.Z.) Limited

Dear Ms. Pelo:

In response to your letter of November 15, 1990, Triton Indonesia Inc. and Triton Energy Corporation provide the following information:

1. Exhibit ZZZ

Mr. Calloway's testimony concerning Exhibit ZZZ is contained in transcript pages 1820-1824. Copies of this testimony are attached to this response.

The specific calculation for "amount due from Nordell (Cash) $329,053" is particularly shown on page 3 of Exhibit ZZZ. A copy of Exhibit ZZZ is attached to this response. The allocations of cost oil and investment credit

oil under the caption "Revenue Paid NIR" are taken from actual payments by Triton to Nordell. The calculations on VVV would not affect this payment.

To calculate the "Payable to Nordell" portion of cost oil and investment credit oil on ZZZ, Mr. Calloway took the Nordell cost recovery total on VVV of $4,522,321 (through February 1990), subtracted the February 1990 amount of $309,756, and arrived at the total of $4,212,565.

According to Mr. Calloway's calculations, the amount paid to Nordell for cost oil recovery and investment credit oil through January 1990 was $4,544,404.75. The amount that should have been paid to Nordell for cost oil recovery and investment credit oil for the same period was $4,212,565.

Exhibit ZZZ cannot be directly "tied in" with Exhibit II, since Exhibit II reflects the gross amounts paid to Triton by Pertamina. Exhibit II was prepared for the Panel, at the Panel's request during the Arbitration, by Mr. Calloway, expressly for the sole purpose of identifying for the Panel the total amounts of revenues received by Triton from Pertamina to date.

Finally, I have attached a commentary by Mr. Calloway explaining his calculation on Exhibit ZZZ. If the Panel desires further information, please advise.

2. Exhibit VVV

Mr. Calloway's testimony concerning this portion of Exhibit VVV is contained in the transcript at pages 1798-1801. Copies of these pages of the transcript are attached for the Panel's reference.

Additionally, Mr. Calloway's remarks, attached to this correspondence, further explain the "duplicated" amounts. Mr. Calloway explains each of the adjustments in his testimony and his memorandum.

I have enclosed three copies of this letter and attachments for distribution among the arbitrators. If further information is necessary, please advise immediately.

Very truly yours,

Bracewell & Patterson

/s/ Jim L. Flegle
JIM L. Flegle

JLF/mar

cc: Mr. Gordon Walker VIA FEDERAL EXPRESS
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Mr. Michael Grzanka VIA FEDERAL EXPRESS
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Q. Alright, you see the three debits, two or three columns over? A. Sorry I don't, I'm not sure if I am following you.

Q. Revenue, these numbers right here? A. Okay.

Q. Are those numbers right there in the bottom? A. These numbers are in the totals at the bottom.

Q. Okay A. Under revenue column, Nordell cost recovery, and Triton cost recovery.

Q. Alright, now, are the numbers – do the numbers in the revenue column, and the Nordell cost recovery and Triton cost recovery, actually reflect February 1990? A. They do.

Q. So those dollars actually came in the door? A. That's correct.

Q. So in terms of your total revenue for the period through February 1990, Nordell cost recovery for the period through February 1990 and Triton cost recovery, those numbers are still correct? A. I believe that's correct, yes.

Q. When you say in the column Nordell's cost recovery, $4,305,574, are you telling the panel that that is what Nordell actually recovered? A. Can I see your schedule?

Q. I'm sorry I've got Mr Gros Dubois' copy. I've got this wrong –

MR ARMOUR: You are reading the wrong –

MR FLEGLE: Q. I am sorry. In your cost recovery Nordell cost recovery, you have a total of $4,522,321? A. That's correct.

Q. Now what does that number reflect? A. That would be Nordell's share of cost recovery from October 1988 through the end of February 1990.

Q. Is that your calculation of what it should have been based on this document? A. That's correct.

Q. Alright, now that calculation – okay. And then the Triton cost recovery column reflects $5,047,282, and is that what your calculations on 'VVV' reflect what it should have been? A. That's correct.

Q. And you are satisfied that even after the confusion that I've just caused, that these are still accurate? A. Those three columns are still accurate yes.

Q. Then I have asked you, Mr Callaway, to scratch out some summaries using documents that have already been admitted in the case, as well as your calculations on 'VVV'. I'm [sic] am going to show you – appropriate remark – 'ZZZ'. We offer them, Your Honour, we offer 'YYY' as the calculation of the head office overhead. . . .

MR ARMOUR: Q. And so you're offerring [sic] at this time? 'ZZZ' a thing called JIB, 11/89 and page is somewhat . . . called revenue and cash basis. A. It's correct.

Q. Do these pages reflect your work, Mr Callaway? A. They do.

Q. You are responsible for it? A. I'm responsible for it.

Q. In terms of that document, did you use what has been marked as Claimant's Exhibit '54', for the KPMG Nordell deficit at 939? A. I did.

Q. Let's see if I can get a copy of that. If the panel would total your numbers on your summary, they would find the negative $663,402 at the bottom of the page marked Appendix 3, partner Nordell? A. That's correct.

Q. I've got it here in front of you.

Now KPMG I believe the testimony said, used the carry termination date of November 3 or thereabouts 1989. How does your summary take the KPMG number on '54' and adjust it for the carry termination date you found and 'VVV', your calculation? A. Started with the KPMG number at the end of September 1990 and I adjusted it for, in my opinion, refund Nordell on the joint interest billing for November 1989.

Q. And that's – before we go too fast here – that is the number $415,140. You have a sheet attached to the front cover of Exhibit 'ZZZ' that explains how you got there? A. Yes I do.

Q. Now, if you turn to that page and explain to us how you got the JIB adjustment of $415,140,? A. On p.2 of 'ZZZ', the amount billed to Nordell for November 1989, on the joint interest billing was $498,168. Divided by 30 days, we were spending $16,605 a day. I multiplied that by the number of days after my determination of the, obligation being met met [sic] on the carry and determined that they should have been billed for $83,028, so I subtract the $83,000 from the amount that they were billed and arrived at a refund due to them of $415,000.

Q. $415,140 the JIB? A. That's correct.

Q. Now the next line, it says 'revenue: amount due from Nordell (cash) and you have got a credit number of $329,053? A. That's correct.

Q. Now that number is calculated on the last page of the . . . which is revenue cash basis. Can you explain to members of the panel, how you got to the bottom line refund? A. Okay. Nordell was paid for the period October

'88 through January '90 for cost oil investment credit oil at $4,544,404.75. In the same period of time, they were paid on profit oil $491,672.04 and on those payments we had deducted $13,600 which we should not have deducted, making total payments to Nordell for that period of time for revenue due them of $520,476.79. $5,022,476.79.

Q. Now then, let me stop you right there. In those calculations, were you using the actual payments to Nordell as a basis for this calculation? A. That's correct.

Q. And then when you're saying that the AMI deduction there, of $13,600, you're saying that in addition to the actual payments of Nordell, $13,600 is still owed them and you stuck that in to what they should have received? A. That's correct.

Q. The next set of calculations is what? Payable to Nordell? A. This is based on my model 'VVV' going through the same period of time, October 1988 through January 1990. Cost oil investment, credit oil, it should have been paid on cash basis as $4,212,565. Profit oil is different because we came up with some problems on our internal audits.

Q. Let me just stop you right there. You said profit oil is different because you came up with some problems. Am I hearing you saying that because of your problems, the profit oil calculation for Nordell instead of being 491,600 change, it should have been $480,058? A. That's correct.

Q. The next line is deductions and you've got zero? A. That's correct.

Q. Can you tell us how the rest of this page works? A. Okay, the amount payable to Nordell for that period of time is calculated tobe [sic] $4,693.81 so subtracting the amount payable from the amount actually paid, we are due $329,052.19 back from Nordel [sic] for over payment of revenue.

Q. Alright sir, going back to 'ZZZ' the first page, how then is your calculation of the carry and the calculation of the revenue due Nordell on a cash basis in 'VVV' affect the conclusions that KPMG reached in its report, Claimant's 54? A. Basically it's an adjustment to KPMG September 30, an amount of $663,000 down to a credit due or amount due from Nordeli of $577,000.

Q. So even if the panel adopts your calculation, 'VVV' for determination of carry based on – comparing that calculation with KPMG numbers, you have arrived at the conclusion that Nordell still owes, as of September 30, 1990, $577,315? A. That's correct.

Q. Now are any of these numbers – did you have any effort to add interest in your calculations to 'ZZZ'? A. There are no calculations to add interest to 'ZZZ'.

Q. I have marked as two other Exhibits, Mr Callaway, A1 and A2. Are A1 and A2 your calculations? A. They are.

Q. And are they calculations for interest on cash call number six and cash call number seven? A. That's correct.

Q. Can you tell us how you calculated A1 and A2?

MR GRZANKA: Can I see them first?

MIKE CALLOWAY'S EXPLANATION OF NOVEMBER 16, 1990 RESPONDING TO PANEL'S REQUEST OF NOVEMBER 15, 1990

Exhibit ZZZ:

Amount obtained from Lotus 123 worksheet (attached) which compares amounts paid to Nordell for their share of cost oil recovery, investment credit oil, and profit oil for the period from October 1988 through January 1990 with amounts calculated as should have been paid to Nordell for the same period.

Exhibit II shows Investment Credit and Cost Oil Recovery (columns 3 and 4 respectively) allowed each month by Pertamina. For example, in June 1989 Investment Credit of $5,583.10 was allowed and Cost Oil Recovery of $510,763.00 was allowed. The amounts paid to Nordell for Investment Credit and Cost Oil Recovery are determined by Nordell's equity percentage at the end of the month in which payment is received from Pertamina. Using June 1989 again, $516,346.10 was distributed using 45.1643% for Nordell or $233,204.06. The 45.1643% is from Exhibit 106 dated 10-22-90. Exhibit II shows, in column 11, that $516,346.10 should be distributed and that $516,346.00, in column 12, was distributed to the parties.

Exhibit VVV:

1. During the Interim Period, Nordell paid for operations as follows:

October 1988	$151,331.00
November 1988	168,669.00
	$320,000.00

Nordell submitted an invoice at the end of February 1989 for $320,000.00 less the remaining amount of Nordell's obligation to spend $587,000.00 towards the Creditor List. In October and November 1988, Nordell had contributed $395,000.00 (rounded from $395,009) toward the Creditor List leaving a remaining obligation of $192,000.00. The invoice submitted by Nordell showed $320,000.00 less $192,000.00 or $128,000.00. Triton paid Nordell $128,000.00 on March 5, 1989.

Later in March 1989, Triton made what was called an omnibus payment to Nordell in the amount of $1,857,782.66. This payment covered cost oil recovery, investment credit oil, profit oil, Nordell cash in bank and other items. Among the other items were payments for Interim Period operations of $151,330.49 and $275,511.00 for October and November 1989, respectively. These items were considered duplicate payments by the auditor and handled as investment for Triton and a reduction of investment for Nordell. As you can see, October 1989 on the Nordell invoice was $151,331.00 and on the omnibus payment was $151,330.49. November 1989 on the Nordell invoice was $168,669.00 and on the omnibus payment was $275,511.00 or a difference of $106,842.00. This was an increase in payables (an accrual) during the interim period which Nordell's auditors did not adjust when they developed the support for the omnibus payment made by Triton at the end of March 1989.

2. The $250,000.00 item was considered a duplicate payment because in the Farmout Agreement Triton was obligated to pay Nordell $250,000.00 under Article 7.1. This was not to be considered Triton investment toward

the "Carry." Triton paid $250,000.00 to an account controlled by R. McAdoo and R. Siouffi in December 1988 to settle this obligation to provide operating funds. As part of the omnibus payment at the end of March 1989, Triton paid $250,000.00 for Art. 7.1 of the FOA. This duplicate payment was handled as Triton investment towards the "Carry" and a reduction of Nordell's investment.

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* * *

project investment. So it was not reflected in that category and we set up a separate column to keep track of the amounts that should be reimbursed and the reimbursements.

Q. So assumption no. 2 there applies directly down to the column that says "reimburseable to Nordell by Triton"? A. That's correct.

Q. Now the third and final assumption, Mr Callaway, I say the final assumption – the third listed assumption at least, reads 'duplicate payments in March 1989 treated as additional Triton investment reducing in A/R investment'. Now let me ask you two questions together. The first question is, can you take us to the page where that applies, and the second question is can you describe to us what it was and why you. . . . ? A. It's on p.2 of 'VVV'.

Q. So we go down to the set of number at the bottom of the page 2? A. That's correct. Show payments

to reimbursing Nordell for the interim period operations $320,000.

Q. That's the second line of payments for the month of March? A. That's correct. Nordell submitted an invoice to us for $128,000 which we paid, I believe on March 5th/6th.

Q. Why have you got $320,000? A. Nordell is supposed to have spent $320,000 as shown in the first two months. 151,331 in January; 168,669 in February.

Q. You mean in October and November? A. Excuse me, yes October and November.

Q. So if we go back to the first page and look at the reimburseables [sic] to Nordell by Triton column we find for IP/NIR payments for operations $151,331 in October, 168.669, in November and the total of those two would be . . . $320,000 which is on the second line of March? A. That's correct.

Q. I am sorry, the issue is –

MR ARMOUR: Q. Excuse me, where does that appear on p.1? A. It shows the cost pool balance at the end of November 1988 under the category' reimburseable [sic] to Nordell by Triton $320,000.

MR FLEGLE: Q. You will find it relatively easily. . . . $151,331 on 168,669 and the total there of $320,000. Why is it that there is a difference in March between the $320,000 that you have got in the columns and $128,000 credit which you have got reimburseable [sic] to Nordell by Triton? A. According to the terms of the farm out agreement, Nordell was obligated to spend $587,000 towards the payment of the creditor list obligations. In

those two months they did not spend $192,000, so it was deducted from their bill that they sent us and we owed them $128,000.

Q. Now is this something that you knew or is it something that you saw in terms of the transaction of the parties? A. There was one invoice from Nordell to Triton.

Q. So in terms of the $320,000 just numerically for a second, under payments of reimburseables [sic] for operations $320,000, you have put a credit of $128,000 reimburseable [sic] to Nordell by Triton column. And the next line you says [sic], 'remaining in our creditor obligations 0000 and a credit of $192,000. Is that the remaining portion of $320,000? A. That's correct.

Q. And what does that line reflect to you? A. The amount that had not been spent by Nordell of their obligation to spend $587,000 towards the creditor list.

Q. Now is that the obligation of spending the August and September revenues? A. That's correct.

Q. The next lines says, 'duplicate payments – I/P operations $151,330' and you have got it debited in two columns and credited in two. Can you explain that for us? A. Part of the $128,000 that we paid that we then in March was also included on their next invoice, or next payment that we made to them. So 151,330 showed up twice, on the invoice that we paid in March and on the payment wemade [sic] at the end of March. The $275,000 is – by the way, some of these numbers were worked up by Mr Eric Vaughan for Nordell. The 151,000, 275,000 were worked out by Mr Vaughan. The 275,000 was the amount supposedly spent in November 1988 by Nordell

and it was also included in the interim period payment for $128,000 except that there was a problem there. It aplpears [sic] that the $275,000 was not actually spent because one of Mr Lafferty's letters shows the 275,000 less 106,000 for increased payables.

Q. You are talking in shorthand to me. Maybe Mr Grudem understands, but can you explain what did you just said in a little bit longer – ? A. I am sorry. Mr Vaughan prepared supporting information that would allow Triton to pay Nordell for interim period operations and for certain subsequent periods. Mr Vaughan failed to recognize that we had already paid for the interim operations in the interim period, when he worked out his numbers. So the 151,000 that was shown in March was also paid as part of the 320,000 less the 192,000 that we paid at the beginning of March. It is very complicated and I still get a little confused myself. The 275,000 is also related to the interim period. Its for November 1988. Mr Vauhan [sic] shows $275,000 cash out the door by Nordell. Mr Laferty's letter shows, for that month, $106,000 increase to payables which brings the 275,000 back down to the 168,000 that I show in November 1988. I am not sure if I've explained it yet. It is difficult to explain, in my opinion there is. – A duplicate payment there.

Q. The next line says, 'duplicate payment for Article 7.1, $250,000' What does that line represent? A. Under Article 7.1 we were obligated to send Nordell's 250,000 that was non refundable. We did that when we sent it to Mr Mcadoo's [sic] account for payment of operating expenses. Mr Vaughan's invoices are numbers that were used to make payment to Nordell at the end of March included the same $250,000 and the same reference to

Article 7.1. While the first payment of $250,000 does not apply to the carry, it was my opinion that the second payment should.

Q. Did you find anything that made you believe the $250,000 was anything more than being the same $250,000 twice? A. No. Not at all.

Q. I want to get to the bottom line in just a minute Mr Callaway. Do you mind just walking through the first month there and explaining to us what each of the line items are in the month? A. You are talking about October 1988?

APPENDIX K

Cadwalader, Wickersham & Taft

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[Additional Addresses Omitted In Printing]

November 30, 1990

George Armour, Esq.
Mr. Marvin Grudem
Mr. Thomas Pyburn
c/o Ms. Becky Pelo
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American Arbitration Association
443 Shatto Place, 2nd Floor
Los Angeles, CA 90020-1781

Re: Case No. 72 T199 0204 90
Nordell International Resources Ltd. -and- Triton Energy Corporation, Triton Indonesia, Inc. and Triton Oil (N.Z.) Limited

Gentlemen:

This letter is Claimant's formal response to the "additional submission" made by Respondents on November 19, 1990. That "additional submission" concerned Respondents' Exhibits VVV and ZZZ, and it consisted of (i) a two-page letter from Mr. Flegle, (ii) a three-page, unverified, written "statement", purportedly "from" Mr. Calloway, and (iii) various exhibits and attachments (including a so-called "Lotus 1-2-3 worksheet" which had not previously been introduced).

I. GENERAL RESPONSE TO MR. FLEGLE'S TWO-PAGE LETTER

Mr. Flegle's letter invites this honorable panel's attention to only nine pages of the transcript of Mr. Calloway's oral testimony at the arbitration hearing. Claimant respectfully submits that such a reference is grossly incomplete and that, in order to *fully* understand Exhibits VVV and ZZZ, it is necessary to review *all* of Mr. Calloway's oral testimony concerning those exhibits (especially the testimony which he gave on *cross*-examination concerning same).

Claimant, of course, already has submitted an *extensive* brief on this very subject (*i.e.*, Claimant's "Arbitration Brief Re Testimony of Michael Calloway"). In the interest of brevity, Claimant will merely restate *one* of the significant points made in that earlier brief; to wit, *all* of the numbers contained in Exhibits VVV and ZZZ are – by Mr. Calloway's own admission – preliminary, tentative, hypothetical, and subject to audit (with the dual effect that (i) Mr. Calloway, himself, admitted that he could not attest to the accuracy of *any* such numbers and (ii) *all* such numbers have *no evidentiary value whatsoever*).

II. CLAIMANT'S "GENERAL" OBJECTIONS TO THE UNVERIFIED, ADDITIONAL STATEMENT (INCLUDING THE NEW "LOTUS 1-2-3 WORKSHEET") PURPORTEDLY "FROM" MR. CALLOWAY

Nordell respectfully objects to the entirety of the written statement allegedly provided by Mr. Calloway on each and all of the following grounds:

A. The statement is "unverified" (*i.e.*, not presented under oath); and, since this honorable panel already has excluded *verified* written statements, Claimant respectfully submits that the same ruling must apply to Mr. Calloway's "unverified" written statement.[1]

B. It contains information (including a new exhibit) with respect to which Claimant has *never* been given an opportunity to cross-examine Mr. Calloway (or any other Triton witness); and

C. It clearly constitutes an attempt, by Respondents, to belatedly introduce evidence which should have been (but which obviously was not) presented during the arbitration proceeding itself. In short, Respondents failed, during the arbitration hearing itself, to produce evidence sufficient to satisfy their own burden of proof concerning the propriety and accuracy of Exhibits VVV and ZZZ, and they should not be given a subsequent opportunity to attempt to remedy this particular failure.

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[1] Indeed, Mr. Calloway did not even sign the written statement which is attributed to him. The *only* factor which links Mr. Calloway to that document is the *title* of same; and Claimant would be very much surprised if, in fact, Ms. Latchford and/or Mr. Flegle did *not* have a substantial role in preparing that particular writing.

III. CLAIMANT'S "FOUNDATIONAL OBJECTIONS" TO THE WRITTEN STATEMENT PURPORTEDLY "FROM" MR. CALLOWAY

One issue which is purportedly "addressed" in the unsigned, unverified statement purportedly attributable to Mr. Calloway involves the question of whether Respondents did (or did not) make "duplicative" payments to Nordell. Respectfully, Claimant asserts that Mr. Calloway is not competent to testify about this issue, as he has no personal knowledge of why (or even whether) any of the payments in question actually were made.

That is, it is important to remember that any analysis of the relationship between potentially "duplicative" payments and the calculations found on Exhibits VVV and/or ZZZ involves *two* distinct sub-issues: (i) whether any "duplicative" payments were, *in fact*, made, and (ii) *if so*, whether any such "duplicative" payments are reflected in any of the numbers found on Exhibits VVV or ZZZ. Mr. Calloway could be competent to testify about the *second* of these sub-issues; but he is totally *in*competent to testify about the first.

The *only* competent evidence which may be adduced with respect to the first of these sub-issues (*i.e.*, whether particular payments were, *in fact*, "duplicative" of other payments) involves (i) the *actual* records of the payments themselves *and* (ii) the testimony of the persons who tendered and received same. Testimony "about" those underlying records would violate the "Best Evidence Rule" (and, in any event, would be *hearsay*); and testimony from someone who, like Mr. Calloway, was *not*

personally involved in the transactions in question, is simply incompetent.

Mr. Calloway contends, of course, that he reviewed various *unspecified* records (which are *not* in evidence), and that it appeared to him that there were two instances in which an amount which may have been paid at one point in time by Triton was "equal to" another amount which may have been paid, perhaps at a different time, by Triton. That is the *only* basis for Mr. Calloway's *conclusion* that such payments are "duplicative"; and, quite simply, that is an insufficient basis for reaching that conclusion.

A perfect example of this phenomenon involves equal payments made under a simple installment loan. Simply put, even if the borrower under such a loan were to pay the same amount twice, at different times, this would be insufficient – in and of itself – to establish that such payments were really "duplicative" of one another. In order to truly ascertain whether such "duplication" existed, it would be necessary to *introduce into evidence* the applicable payment documentation (*e.g.*, invoices, payment stubs, checks) *and* to hear testimony from the *payor* as to what he (she) actually intended to be paying.

Here, of course, Respondent has *never* introduced the underlying documentation (which, of course, is necessary to satisfy the so-called "Best Evidence Rule"); and Respondents have never presented any witness who could testify from personal knowledge that *any* payments made to Nordell actually were "duplicative" of any earlier payments (as opposed to being the payment of separate obligations).

Indeed, Respondents have not even adduced competent evidence that any of the payments in question *actually* were made.

These problems are further compounded by Mr. Calloway's earlier testimony that he has *not* yet completed his "audit" of Respondent's various books and records and that he *still* needs to confer with Mr. Keever and others in order to verify the accuracy of his (Mr. Calloway's) admittedly preliminary numbers and assumptions. Clearly, when it is unclear whether the persons actually involved in making the alleged payments in question will (or will not) confirm Mr. Calloway's tentative opinions concerning "duplication", and where (by Mr. Calloway's own admission) such persons have not yet even been consulted by him, Mr. Calloway's tentative opinions should not, can not, and must not be given any weight whatsoever.

In short, there is no foundation for any of Mr. Calloway's statements as to whether "duplicate" payments were (or were not) in fact made. If Triton wanted to satisfy *its* burden of proving such "duplication", Triton should have presented someone who could say something more than, "Tentatively, the amounts in question are similar [or even identical]".[2] Further, to the extent

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[2] In any event, Nordell contends that no "duplicative" payments were, in fact, made to it by Triton. If this panel so desires, Nordell is willing to make a detailed, evidentiary presentation on this point; but, in light of the fact that it is Triton which bears the burden of proof on this issue, and in light of the additional fact that Triton clearly has not satisfied that particular burden, Nordell will not now belabor this point.

that Exhibit VVV assumes that any "duplicate" payments *were* made (which it does), and to the extent that such an assumption impacts any of the calculations found in Exhibit VVV (which it does), that Exhibit must be viewed as legally incorrect. To use the appropriate legal jargon, Exhibit VVV "assumes facts not in evidence".

IV. FOR ANY NUMBER OF REASONS, THE CALCULATIONS SET FORTH IN EXHIBIT ZZZ ARE "JUST PLAIN WRONG", INDEED, THE VERY FIRST NUMBER FOUND ON THE FIRST PAGE OF EXHIBIT ZZZ (I.E., "[S663,402]") IS, ACCORDING TO TRITON'S OWN LATEST ANALYSIS, INCORRECT AND BASED UPON AN INCORRECT ASSUMPTION

This honorable arbitration panel could (and should) reject the entirety of Exhibit ZZZ for the various reasons earlier set forth in Claimant's above-referenced "Arbitration Brief Re Testimony of Michael Calloway". Alternatively, the panel could (and should) reject that Exhibit because its calculations are unsupported by, and actually are inconsistent with, (i) the "true facts", as established by Claimant's extensive evidentiary showing, (ii) the express language of the FOA, the JOA, and the Rehabilitation and Secondary Recovery Contract with Pertamina (for example, such contracts make very clear that Nordell was (and is) to be considered the "Operator", for contractual purposes, during the so-called "Interim Period" and that Nordell was (and is) entitled to the *immediate* reimbursement of, and to interest on, any overpayment(s) made by it with respect to cash calls and/or

JIB's) and (iii) the express language of the binding agreements reached in Bangkok during the so-called "Op Com No. 2".

Nevertheless, there is even a stronger, independent reason for this panel to reject Exhibit ZZZ; and this reason involves the very simple, very obvious fact that *the most elemental number set forth in that particular Exhibit is, according to Triton's own records and officers, incorrect and based upon an incorrect assumption.*

More precisely, Exhibit ZZZ begins with the following line:

> "KPMG's Nordell deficit @ 9/30/90: [$663,402]"

This particular number (*i.e.*, "[$663,402]") is one of only *three* numbers which are used, on the first page of Exhibit ZZZ, to calculate the total amount which *Triton claims is owed by Nordell;* and, as Exhibit ZZZ *expressly* indicates, this very significant number is derived from calculations done by persons *other than* Mr. Calloway himself (*i.e.*, KPMG).

As shall be demonstrated hereinbelow, these particular KPMG calculations are completely useless. They are based upon unaudited numbers; they derive from assumptions and legal interpretations which are not the result of KPMG's independent evaluation (but, rather, are assumptions and interpretations given to, and inalterably imposed upon, KPMG by Triton itself); *and they are based upon a "carry completion date" which is incorrect, even by Triton's own (and Mr. Calloway's own) current analysis.*

We shall address these points in reverse order.

First, in concluding that, as of September 30, 1990, Nordell allegedly had *underpaid* its cash call and JIB "obligations" by $663,402, KPMG *assumed* (without any independent evaluation, and only as the result of Triton's initial instructions to do so) that Triton had completed its "cash carry obligation" on November 3, 1989 (See Claimant's Exhibit 54). In fact, Mr. Calloway, himself, disagrees with this assumption; Mr. Calloway has opined that this "cash carry obligation" was *not* satisfied until at least November 25, 1989; Mr. Calloway's position was legally adopted by Triton itself in the so-called "Exhibit 106" to Triton's earlier-filed Interrogatory Responses.[3]

This disagreement means, quite simply, that the first line of the first page of Exhibit ZZZ is grossly inaccurate and that (even according to Triton's own contentions) the number set forth on that line must be dramatically altered *in Nordell's favor.*

More particularly, both sides to this arbitration *agree* that the question of when Triton's "cash carry obligation" was actually satisfied impacts *significantly* upon the question of damages: to wit, the *later* the "cash carry completion date", the *more* Nordell has *overpaid.* Further, this impacts such that, if one were to assume *only* that the "cash carry" was satisfied in *late* November (as Triton itself now contends), rather than in *early* November (as KPMG *assumed*), the amounts which Nordell *should have been* charged for cash calls and JIB's diminished *dramatically* (*i.e.*, by hundreds and hundreds of thousands of

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[3] Of course, Claimant contends that this "cash carry obligation" was not satisfied until February of 1990, at the very earliest; but Claimant shall not now reargue this point.

dollars) – and this is so even if one were to accept, *arguendo*, *all* of *Triton's* other assertions in this case.

This point is well illustrated by comparing the two different schedules which comprise Exhibit 44. Both of these schedules reflect Mr. Murphy's attempts to ascertain, according to Triton's own numbers and assumptions, whether the "joint venture partners" to the agreements here in issue had overpaid (or underpaid) their respective cash call and JIB "obligations" over time. In the first of these schedules, Mr. Murphy assumed a "cash carry completion date" of *early* November, 1989; and in the second, he assumed a "cash carry completion date" of *late* November, 1989.

Based upon this single difference, Mr. Murphy's "due to/due from" calculations differ dramatically. For example, in the first of his Exhibit 44 schedules (which, like the KPMG Report, assumes an *early* November, 1989 "cash carry completion date"),[4] Mr. Murphy concludes that, as of September, 1990, Nordell supposedly had "*underpaid*" its cash call and JIB "obligations" by $526,457; but, in the second of his schedules (in which Mr. Murphy, like Mr. Calloway, assumes a *late* November, 1989 "cash carry completion date"), Mr. Murphy concludes that, as of September, 1990 – AND EVEN IF YOU USE *ONLY* TRITON'S

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[4] The calculations found in Exhibit 54 (the "updated KPMG Report") closely parallel those found in the first half of Exhibit 44. Since *both* calculations were, essentially, simple mathematical calculations based upon *Triton's* own unaudited numbers as to what was demanded and what was paid, this should come as no surprise.

NUMBERS AND CALCULATIONS – Nordell actually had *overpaid* its cash call and JIB "obligations" by $54,034.

Thus, this relatively small change in the assumption used with respect to the "cash carry completion date" had an enormous impact upon Mr. Murphy's calculations of the amounts "due to/due from" Nordell (*i.e.*, a difference of $580,491).

Obviously, if one were to change the number found on the first line of Exhibit ZZZ from a Nordell debit to a Nordell credit (as Exhibit 44 suggests), or even if one were merely to reduce the amount of the alleged Nordell "debit" by $580,491, such actions would – in and of themselves – have a *significant* impact upon the "bottom line" expressed in that same Exhibit; and this impact *clearly* would benefit Nordell![5]

As a result, if, according to *Triton's own* current position, the first line of the first page of Exhibit ZZZ is

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[5] Again, *all* of Mr. Murphy's calculations are based upon *Triton's* numbers, *Triton's* presumptions, and *Triton's* contractual interpretations. Thus, because Nordell contends that many of Triton's numbers, many of Triton's assumptions, and many of Triton's contractual interpretatons [sic] are incorrect, Nordell respectfully submits that Mr. Murphy's calculations grossly understate the subtantial [sic] amounts due and owing from Triton to Nordell.

Nevertheless, the foregoing analysis concerning Exhibit 44 *is* important for one very simple reason: to wit, it clearly demonstrates that the first line of the first page of Exhibit ZZZ is grossly inaccurate – even if you use Triton's own current position as to when the "cash carry" was completed (*i.e.*, late November of 1989) and even if you use all of Triton's own numbers, calculations, and assumptions concerning the validity of all cash calls and JIB's.

overstated, how can the remainder of that document have *any* probative value?

The answer is obvious: it cannot.

Further, it should be noted that the "[$663,402] number" is, in and of itself, an "unaudited", foundationless number, based *solely* upon information, assumptions, and contractual interpretations prepared *exclusively* by Respondents themselves. KPMG *never* made any attempt to analyze whether *any* of Triton's demands for additional advances (whether such demands took the form of cash calls or joint interest billings) were reasonable, appropriate, and/or authorized by the terms of the contracts here in issue. Nor did KMPG [sic] verify any of the computations used by Triton to "calculate" such demands.

Rather, KPMG did nothing more than undertake the simple mathematical tasks of (i) adding up all of the "demands for additional advances" actually made by Triton upon Nordell (as reflected in *Triton's* own books and records, and as computed exclusively by *Triton* itself, using *Triton's* own numbers, assumptions, and contentions) and (ii) thereafter comparing that number with the aggregate of the payments actually made by Nordell in response to such "demands", either directly or through Pertamina payments which were not remitted to Nordell (again, using only *Triton's* books, records, numbers, assumptions, and so forth, and doing so without any independent audit or analysis).

In essence, *all* KPMG did, in Exhibit 54, was say, "If you add these unaudited numbers, you will get this unaudited total; and if you subtract these other

unaudited numbers, you will get this unaudited remainder".[6]

The first line of the first page of Exhibit ZZZ, therefore, is a classic example of "bootstrapping": to wit, (i) Triton provided KPMG with various numbers showing *only* the amounts which *Triton* claimed Nordell was "obligated" to pay (and KPMG made *no independent evaluation* as to the propriety of any such numbers or "obligations"), (ii) Triton also gave KPMG certain immutable directions as to various legal and contract interpretation issues (and, again, KPMG made no independent evaluation of *any* such issues), (iii) as a result, KPMG provided Triton with an "unaudited", extremely "qualified", and *essentially meaningless*, arithmetic calculation which said (Surprise!), "Nordell paid less than Triton demanded", (iv) Triton took that calculation and inserted it (*without* any underlying detail, explanation or analysis) into Exhibit ZZZ[7], and (v) Triton therefore argues, "See, Nordell owes us money".

Clearly, this approach "begs the question" (indeed, *all* of the questions) involved herein. Exhibit ZZZ is a

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[6] One need not be a certified public accountant to perform this "mindless", mathematical task; and Claimant respectfully submits that Respondents elected to use KPMG for this task solely for the purpose of hiding the true insignificance, and the pure sophistry, of such calculations.

[7] Indeed, KPMG refused even to produce the work papers upon which its calculations were based.

mathematical "house of cards" which Triton has erected through an unsubstantiated "sleight of hand".[8]

Finally, it is important to remember that the first line of the first page of Exhibit ZZZ includes, as part of the amount allegedly due from Nordell to Triton, various amounts (i) whose payment has been *excused as a matter of law* by Respondents' own contractual breaches and/or (ii) which relate to a particular JIB which was *never even submitted to Nordell.*

The first of these points has already been addressed, in great detail, by Nordell (and such arguments shall not now be reiterated); and the second point specifically

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[8] Of course, and as Claimant repeatedly has asserted (and as opposing counsel repeatedly has refused to acknowledge), Nordell vigorously disputes the propriety, and amount, of *all* of the cash calls and JIB's made upon it. Among the reasons for Nordell's contentions in this regard are, *inter alia*, Triton's failure to take "cash balances" into account when issuing cash calls and JIB's, Triton's insistence on including "non-cash items" (such as "working capital movements" in excess of $5,000,000) in its JIB calculations, and Triton's failure to reduce expenses when confronted with significant shortfalls in production and revenues.

In response to all of this, Triton failed to produce even a single witness who admitted to having been responsible for (or even admitted to possessing detailed knowledge about) the specific procedures and computations actually used by Triton to calculate the amounts demanded in its cash calls and JIB's. When questioned about such details, *every single one* of Triton's witnesses – Mr. Murphy, Mr. Calloway, Mr. Keever, Mr. McClure, and all of the KPMG witnesses – "pointed the finger elsewhere" and said, in essence, "you'll have to ask someone else". Unfortunately, that "someone else" was never produced by Triton.

involves the so-called "July JIB" purportedly "due" in September of 1990. Simply put, that particular JIB was *never* submitted to Nordell for payment; and, therefore, it cannot be said that Nordell refused to pay (or even was "obligated" to pay) that "secret" amount.

Since KPMG *did*, however, include that "phanton" amount in the calculation which has found its way into the first line of the first page of Exhibit ZZZ, that line is in error for this reason as well.

V. THE AMOUNT SHOWN ON THE SECOND LINE OF THE FIRST PAGE OF EXHIBIT ZZZ (I.E. "$415,140") IS INACCURATE

Nordell contends, of course, that Triton did not satisfy its "cash carry obligation" until February of 1990, at the very earliest. As a result, Nordell claims that *all* cash calls and JIB's which concern the period prior to that actual date were (are) improper; and Nordell further argues that it should be entitled to a *full* refund of all payments made (under protest) in response to all of those "early" demands for additional advances.

Thus, to the extent that the second line of the first page of Exhibit ZZZ does not recognize Nordell's entitlement to a refund of the payments made by it with respect to *all premature* cash calls and JIB's, and to the extent that the same line recognizes such an entitlement for *only a*

portion of Nordell's November, 1989 JIB payment, the number set forth on that line is woefully inaccurate.[9]

Beyond all of the foregoing, however, it must be noted that Mr. Calloway made at least two errors – one mathematical, the other methodological – in his computation of the second line of the first page of Exhibit ZZZ.

First, the *second page* of Exhibit ZZZ shows how Mr. Calloway calculated the amount found on the second line of the first page of Exhibit ZZZ. As that second *page* clearly reveals, Mr. Calloway *mistakenly* assumed that Nordell's share of the November, 1989 JIB was only $498,168, when IN REALITY that amount should have been $580,491 – the total amount which Nordell *actually paid* in response to Triton's *two* demands for cash for November, 1989 (*see, e.g.*, Exhibit 33; *see also*, Exhibit 44, page 1, line 8 of the section marked "January, 1990"). It seems that Mr. Calloway simply "forgot" about Triton's

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[9] Further, and beyond the fact that Triton improperly made "demands for additional advances" *before* the actual completion of the "carry period", it is important to remember that *Triton's* efforts to "quantify" the parties' respective cash call and JIB "obligations" – which computations are reflected in both of the *first two lines* of Exhibit ZZZ – are based upon the grossly incorrect assumption that Nordell had to pay whatever billings Triton made to Nordell, whether or not those billing were justified by cash requirements of the Project (which they weren't), and whether or not Triton itself was contributing to the Project (which it wasn't).

Of course, Nordell has done its own calculations with respect to the various cash call and JIB demands made upon it; and those calculations (which are reflected in Claimant's Exhibit 40) show that Nordell actually has *overpaid* by – and therefore is entitled to a refund of – $897,838.

additional "demand" for $82,323; this error directly impacts upon his computation of the number found on the second line of the first page of Exhibit ZZZ; and (surprise!) this error inures to Triton's benefit and Nordell's detriment.

Clearly, this error in Mr. Calloway's "base number" taints the entirety of his calculations on this particular point; indeed, it further taints the accuracy of *all* of Mr. Calloway's calculations.

Secondly, as shown on page 2 of Exhibit ZZZ, Mr. Calloway's calculations *assume* that, during the month of November, 1989, Triton made *equal* expenditures on each and every day of that month. Clearly, such an assumption does not reflect reality. Therefore, instead of using a "shorthand" methodology of this type, Mr. Calloway should have reviewed *actual*, daily expenditures for the month of November, 1989, and used those actual expenditures to calculate *exactly* when Triton's "carry obligation" *actually* was satisifed (if, as Mr. Calloway asserts, it *really* was satisfied sometime during that particular month).

VI. THE AMOUNT SHOWN ON THE THIRD LINE OF THE FIRST PAGE OF EXHIBIT ZZZ (I.E., "[$329,053]") IS MEANINGLESS

Claimant's response to the third line of the first page of Exhibit ZZZ is very easy to articulate: *i.e.*, that third line is entirely meaningless, as it does nothing but compare two sets of *Triton's own* calculations (*see* page 3 of Exhibit ZZZ).

More particularly, the first of these two sets of calculations reflects *Triton's original* position as to how items such as "net project investment" and the parties' respective "shares" of "Pertamina remittances" should properly be calculated. In fact, such calculations set forth the amounts actually paid (according to *Triton's* records) to Nordell in the form of "Pertamina remittances"; and, therefore, this first set of calculations reflects nothing more than the amounts which Triton orginally [sic] *admitted* it owed to Nordell.

Nordell, of course, always has contended that such calculations were incorrect and resulted in a gross *underpayment* of the amounts actually due and owing to it; but, of course, neither Nordell's contentions nor the economic consequences of those contentions are reflected anywhere in this first set of calculations.

Nor are such matters reflected in the *second* set of calculations which Mr. Calloway used to calculate the number found on the third line of the first page of Exhibit ZZZ. Once again, this *second* set of calculations reflects *only* Triton's numbers, *only* Triton's assumption, and *only* Triton's contractual interpretations; and this second set of calculations is even more restrictive than the first. That is, through this second set of calculations, Triton seeks to renege on its earlier admitted positions, and its earlier relied-upon calculations; and Triton likewise attempts to use this *second* set of calculations to contend that, "in reality", it had "mistakenly" *overpaid* Nordell with respect to Nordell's "share" of "Pertamina remittances".

Please excuse Claimant's cynicism; but it seems "all too convenient" that this alleged "overpayment" argument was raised, *for the very first time*, (i) at the arbitration proceeding, (ii) on a hand-written (*i.e.*, hastily prepared) sheet of paper and without *any* supporting documentation, and (iii) only *after* it had become abundantly clear (through Mr. Murphy's "surprise" production of Exhibit 44) that, in the absence of such an argument, Triton clearly would be obligated to pay substantial sums to Nordell. Indeed, Claimant asserts that this "coincidence" is reminiscent of the machinations referenced in Exhibit 7, the unsigned memorandum which was written by Mr. Murphy, Mr. McClure, or Mr. Keever and which concerns conversations as to how Triton might fraudulently bill Nordell for sums Nordell simply did not owe.

In any event, Nordell respectfully submits that Triton should *not* benefit from a comparison of two of its own calculations. Such a comparison does nothing more than illustrate differences in the inconsistent and vascillating [sic] positions taken by Triton; it does not even address the claims made by Nordell.

Finally, it is important to note (i) that the *second* set of Triton's calculations is, by Mr. Calloway's own admission, preliminary, tentative, and subject to further modification and audit, and (ii) that the *first* set (which Triton now seeks to abandon) reflects a course of conduct *voluntarily* adopted by and implemented by Triton itself. Triton can not be allowed to *continually* change positions to Nordell's significant detriment.

In sum, Claimant suggests that it would be far more appropriate to analyze the calculations done, by Claimant

itself, with respect to the significant difference between the amount of "Pertamina remittances" actually paid to Nordell and the amount which should have been paid under Nordell's arguments. This analysis is found in Exhibit 70.

VII. CLOSING POINTS

Beyond all of the foregoing, Claimant would like to end this "letter brief" exactly where it began: *i.e.*, with a reference to Claimant's earlier-filed "Arbitration Brief Re the Testimony of Michael Calloway".

As stated therein, all of the numbers found in Exhibit VVV are *undeniably* tentative, hypothetical, incorrect, and are such that Mr. Calloway, himself, simply would not (and could not) attest to their accuracy. Further, to the extent that Exhibit ZZZ contains numbers which are derived from those found in Exhibit VVV (and, since Exhibit VVV reflects Triton's calculations concerning issues such as the "carry", the parties' respective "shares" of "net project investment", and the parties' respective "shares" of "Pertamina remittances", such a derivative relationship clearly does exist), Exhibit ZZZ is "tainted" by the same problems which "taint" Exhibit VVV.

VII. CONCLUSION

For each and all of the foregoing reasons (and for those additional reasons set forth in Claimant's earlier-filed "Arbitration Brief Re Testimony of Michael Calloway"), Claimant respectfully submits that all of the numbers contained on Exhibits VVV and ZZZ have no

probative value and must be ignored. Further, Claimants respectfully submit that *Nordell* is the party properly entitled to relief, and that a proper computation of Nordell's damages is found in Claimant's Exhibit Post-Hearing Memorandum, Attachment "A", page 62.

Respectfully submitted,

CADWALADER, WICKERSHAM & TAFT

By /s/ Michael R. Grzanka
Michael R. Grzanka

MRG/mwr

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APPENDIX L

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December 3, 1990

72 T199 0204 90
Nordell International Resources Ltd.,
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and Triton
Energy Corporation, Triton Oil (NZ)
Limited

VIA FAX AND REGULAR MAIL

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Dear Parties:

The arbitrators in the above-captioned matter, having considered the communications and documents recently received in this matter, hereby order as follows:

1) The arbitrators will not consider or order on any alleged factual information contained in letters or documents transmitted to them dated November 20 through November 30, 1990, and hereby order that no future submissions occur.

2) The panel orders, and repeals its previous order that all communications and requests for information between the parties cease and desist, both in Indonesia and the United States, except requests submitted by and between Michael R. Grzanka, Esq., counsel for Nordell Int'l Resources, Ltd., and Jim L. Flagle, Esq., counsel for Triton Indonesia, Inc., et al.

Said order is effective immediately. Should you have any questions please contact the undersigned.

Sincerely,

/s/ Becky Pelo
Becky Pelo
Tribunal Administrator

cc: George P. Armour, Esq.
Mr. Thomas D. Pyburn
Mr. Marvin Grudem, CPA

(2)

Supreme Court, U.S.
FILED
JAN 19 1994
OFFICE OF THE CLERK

No. 93-1104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

NORDELL INTERNATIONAL RESOURCES LTD.,

Petitioner,

v.

TRITON INDONESIA INC., TRITON ENERGY CORPORATION, AND TRITON OIL (NZ) LIMITED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESTATED QUESTIONS PRESENTED

The questions presented in the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be restated as follows:

1. In the context of a commercial arbitration, does this Court have special and important reasons to make findings of fact of "fraud" and "corruption," which are contrary to findings of fact made by an American Arbitration Association Arbitration Panel and the United States District Court for the Central District of California, and which findings of fact were unanimously affirmed by a panel of the United States Court of Appeals for the Ninth Circuit, on factual matters which were thoroughly and completely submitted to the Arbitration Panel, properly confirmed by the District Court, and unanimously affirmed by the Ninth Circuit, where the findings of fact by the Arbitration Panel are clearly within the scope of a commercial arbitration clause and the relief requested by Petitioner?

2. In the context of a commercial arbitration, does this Court have special and important reasons to make findings of fact of "unclean hands," which are contrary to findings of fact made by an American Arbitration Association Arbitration Panel and the United States District Court for the Central District of California, and which findings of fact were unanimously affirmed by a panel of the United States Court of Appeals for the Ninth Circuit, on factual matters which were thoroughly and completely submitted to the Arbitration Panel, properly confirmed by the District Court, and unanimously affirmed by the Ninth Circuit, in order to create a possibility that such new findings of fact by this Court would justify the application of the "unclean hands doctrine," justify the creation of the "unclean hands doctrine" as an explicit, well-defined and dominant federal public policy by which to review commercial arbitration proceedings, and justify a finding that the Arbitration Award, confirmed by the decisions below, violated this newly created public policy?

PARTIES AND RULE 29.1 STATEMENT

Respondents concur with the Rule 29.1 Statement of Petitioner except in the following respects:

Triton Energy Corporation has issued shares to the public. Triton Indonesia is a wholly-owned subsidiary of Triton Energy Corporation.

Triton Oil (N.Z.) Limited is a wholly-owned subsidiary of New Zealand Petroleum Company Limited, a company which has issued shares to the public. The Arbitration Panel determined that Triton Oil (N.Z.) Limited was "not an independent participant in the Enim Project, and therefore cannot be considered as a separate party in this case." It has therefore not been considered as a separate party in this case by either Petitioner or Respondents in their arguments, motions and briefing.

Further, Triton Energy Corporation identifies the following additional parent companies, subsidiaries or affiliates that have issued shares to the public:

Crusader Limited
Triton Europe, plc
Triton Canada Resources Ltd.
Australian Hydrocarbons N.L.
Aero Services International, Inc.
Allied Queensland Coalfields Ltd.

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No. 93-1104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

NORDELL INTERNATIONAL RESOURCES LTD.,

Petitioner,

v.

TRITON INDONESIA INC., TRITON ENERGY CORPORATION, AND TRITON OIL (NZ) LIMITED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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The Respondents, Triton Indonesia Inc. and Triton Energy Corporation (collectively referenced as "Triton"), respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's Memorandum Opinion in this case. That opinion, and subsequent decisions, are attached as part of the Appendix to the petition for writ of certiorari.

OPINIONS BELOW

The Opinion of the Ninth Circuit is properly reprinted at Nordell Appendix A, APP-1-23.[1] The Final Judgment Confirming Arbitration Award of the United States District Court for the Central District of California, (E. Rafeedie, District Judge) is properly reprinted at Nordell Appendix B, APP-24-25. The Arbitration Award is properly reprinted at Nordell Appendix B, APP-25-33.

OBJECTION TO JURISDICTIONAL STATEMENT

Pursuant to Supreme Court Rule 15.4, Triton objects to the jurisdiction of the Court to grant a writ of certiorari based on the arguments set forth by Nordell Resources Ltd. ("Nordell"), which jurisdiction, Nordell contends, is based on 28 U.S.C. § 1254(1) and 9 U.S.C. §§ 16(a)(1)(D)-(E), 16(a)(3).

A. The decision below does not decide a federal question in a way that conflicts with applicable decisions of this Court.

Nordell argues that the Ninth Circuit's Memorandum Opinion "ignores" this Court's prior decisions of *United Paperworkers International Union, AFL-CIO, v. Misco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987) and *W.R. Grace and Co. v. Local Union*, 759, 461 U.S. 767, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983). Nordell's Petition for Writ of Certiorari,[2] p. 14. Supreme Court Rule 10 sets forth the character of reasons to be considered for the exercise of this Court's discretion to grant a

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[1] References to documents included in the Appendix to Nordell's Petition will be referenced as the "Nordell Appendix." References to documents in the Appendix to this Brief will be referenced as the "Appendix." Specific page references to both will be cited as "APP-___."

[2] Hereafter, Nordell's Petition for Writ of Certiorari will be referenced as the "Petition."

petition for writ of certiorari. Nordell apparently argues that this Court should exercise its jurisdiction because the Ninth Circuit's opinion allegedly decides "a federal question in a way that conflicts with applicable decisions of this Court." Supreme Court Rule 10(c). This factor is not remotely present here. As Nordell concedes, in *Misco* and *W.R. Grace*, this Court *refused* to overturn arbitration awards on grounds that they violated public policy. Petition, pp. 15-16. Similarly, t' : Ninth Circuit below refused to overturn the award at issue here. (Nordell Appendix A, APP-8-11.) Thus, the Court's decisions in *Misco* and *W.R. Grace* support, rather than conflict with, the Ninth Circuit's decision below. The Petition should be denied on this basis alone.

B. 9 U.S.C. § 16 does not confer independent jurisdiction for this Court to review the decision below.

Title 9, Section 16 of the United States Code is not an independent ground to be used by this Court to exercise jurisdiction. This provision was recently enacted to provide certain limited rights of appeal for parties involved in arbitrations (for example, where a trial court rejects a party's contention that a dispute is arbitrable). The rights of appeal provided by Section 16 refer to rights to appeal certain orders impacting arbitration or arbitration awards, themselves, to the federal courts of appeal, not to this Court. *See, e.g., Campbell v. Dominick & Dominick, Inc.*, 872 F.2d 358, 361 (11th Cir. 1989); *Turboff v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 867 F.2d 1518 (5th Cir. 1989).

REVISIONS, CORRECTIONS AND ADDITIONS TO PETITIONER'S STATEMENT OF THE CASE

Petitioner, Nordell, lost a commercial arbitration which Nordell commenced in January 1990. The Arbitration Proceedings included three weeks of testimony on hotly contested factual

issues in Singapore in October 1990. Nordell was allowed to present evidence, arguments, and authorities to the Arbitration Panel. After it lost the Arbitration Proceedings, Nordell moved to vacate the Arbitration Award in the United States District Court for the Central District of California. Nordell lost again. Nordell appealed to the Ninth Circuit. By a unanimous decision, it lost again.

Nordell presents many challenges to facts found by the Arbitration Panel and by the District Court, all of which were unanimously affirmed by the Ninth Circuit. There is no reason for this Court to grant the Petition to review fact findings which were correct when made, confirmed, and affirmed, in a commercial arbitration involving an Indonesian oil concession.

A. Summary Overview

In October 1988, Respondent, Triton Indonesia Inc. ("TII"), entered a commercial contract with Petitioner, Nordell, which involved oil and gas operations in Indonesia and which required arbitration of any disputes in Singapore. Respondent, Triton Energy Corporation ("Triton Energy"), executed a written limited guaranty agreement as part of the commercial transaction. Veronex Resources Ltd. ("Veronex"), the parent of Nordell, was also involved in the transaction. The arbitration clause in the contract was broad and unrestricted. (Appendix 1; Nordell Appendix A, APP-12-13.) The arbitration clause invoked the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). *Id.*

In January 1990, Nordell "c/o Veronex Resources Ltd." demanded arbitration against both TII and Triton Energy. A distinguished three-member panel of arbitrators was selected by the parties and by the Los Angeles office of the AAA (the "Arbitration Panel" or "Panel"). The Panel held several prehearing conferences and entered an interim order prior to commencement of the Arbitration Proceedings.

The Arbitration Panel heard three weeks of testimony in October 1990 in Singapore. The Panel heard closing arguments in Los Angeles in November 1990. The Panel issued its arbitration award (the "Arbitration Award" or "Award") on December 13, 1990.

Nordell requested a "divorce" -- equitable relief -- as well as damages and punitive damages from Triton. (Appendix 4, APP-8-9.) Nordell was allowed to present all of its evidence to the Arbitration Panel, including evidence which Nordell contended supported its claims of fraud, corruption, and unclean hands, against Triton. (Appendices 4 and 5, APP-8-14.) The Panel granted Nordell a "divorce". The Panel granted damages to Triton and realigned the parties' interests in the ENIM Project. The District Court confirmed the Arbitration Award. The Ninth Circuit unanimously affirmed the District Court's Final Judgment as it related to Nordell. TII and Triton Energy are proceeding with the remanded issues involving Veronex before Judge Rafeedie at this time.

B. Revisions, Corrections and Additions to Petitioner's Factual Overview

Throughout its Petition, Nordell misstates and mischaracterizes the proceedings below concerning: (i) the issue of fraud and the manner in which Nordell presented the issue of fraud during the Arbitration Proceedings; (ii) the *complete absence* of findings by the Panel that Triton committed fraud, that Triton in any way violated the Foreign Corrupt Practices Act ("FCPA"), that Triton violated any public policy, or that Triton had "unclean hands;" (iii) the substantial evidence on which the Panel properly relied in issuing the Arbitration Award; and (iv) the testimony of the arbitration witnesses supporting the Arbitration Award.

1. Nordell's loosely asserted "fraud" claim.

During the middle of the Arbitration Proceedings, Nordell asserted a claim against Triton based on purported fraudulent

accounting practices by Triton in the ENIM Project. Nordell used its fraud claim very loosely, much in the fashion it loosely asserts "fraud" throughout its Petition. Nordell presented evidence that it alleged supported its fraud claim to the Arbitration Panel. Because the fraud claims were so vague, Mr. Armour, the head of the Arbitration Panel, instructed Nordell to clarify its claims of fraud. Instead of amending its claims, Nordell stated that it withdrew the fraud issue, contending that "the same evidence [presented by Nordell] that goes to fraud goes to the issues of breaches of contract, breach of fiduciary duty. The same evidence is a basis for the remedy that we're going to ask for . . . " (Appendix 13, APP-59-60.)

Nordell, although it claimed to withdraw its fraud claim, continued to argue fraud throughout the Arbitration Proceedings. (ER 141,[3] Exh. R, Tr. 327-28, 475, 790, 1065, 1143, 1183, 1281). Nordell even supplied to the Arbitration Panel a brief on the elements of fraud. (Appendix 11, APP-43.) The Arbitration Panel unanimously rejected each of Nordell's arguments.

2. The Arbitration Panel implicitly found that Triton did not commit fraud.

As the Arbitration Award reflects, the Arbitration Panel found in favor of Triton and against Nordell on every issue submitted for decision. (Nordell Appendix B, APP-24-33.) The Arbitration Panel did *not* find that Triton committed fraud -- whether common law fraud, securities fraud, or any other type of fraud. *Id.* The Arbitration Panel did *not* find that Triton committed a violation of the FCPA. *Id.* The Arbitration Panel did not find that Triton violated public policy of any kind, nor did it find that Triton was guilty of "unclean hands." *Id.* As the Ninth

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[3] *Citations to Record below not included in Appendix*: "CR" refers to items on the District Court's Docket Sheet which were not included in the Excerpts of Record filed with the Ninth Circuit. "ER" refers to items included in the Excerpts of Record and corresponds to item numbers on the District Courts' Docket Sheet.

Circuit correctly found: "The reliability of Triton's data was a hotly contested factual issue during the proceedings. By relying on the data in the face of allegation of fraud, the Arbitration Panel implicitly made a factual finding that the data were reliable." (Nordell Appendix A, APP-9.) Moreover, Nordell -- at no time -- argued to the District Court below or to the Ninth Circuit that alleged securities fraud or alleged violations of the FCPA by Triton were grounds to vacate the Award.

3. The basis of the arbitration award.

The Arbitration Award is completely supported by competent testimony and evidence admitted and reviewed by the Arbitration Panel below. This was more fully described by Triton in correspondence dated July 29, 1991 to the Arbitration Panel. (Appendix 7.)

The Arbitration Award is supported by calculations from (i) cash-based exhibits prepared by Michael Calloway [4] -- Triton's Arbitration Exhibits VVV and ZZZ (Appendix 3; ER 141, Exh. E), (ii) the KPMG Report of October 11, 1990 -- Nordell's Arbitration Exhibit 54 (Appendix 2; ER 141, Exh. F), and (iii) calculations by Nordell itself -- Nordell's Arbitration Exhibit 33 (ER 141, Exh. G). Mr. Calloway took the cash basis required by Nordell, reviewed the source documents concerning the cash receipts and cash payments, and constructed Triton's Arbitration Exhibit VVV. He included Triton's administrative

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[4] Calloway was an internal auditor for Triton. The so-called "Calloway Report," about which Nordell makes such ado, was an internal memorandum prepared by Calloway after being employed by Triton for only approximately three months. It contains no admissions of fraud, corruption, or unclean hands, as claimed by Nordell. As the following evidence will show, the matters contained in the Calloway memorandum had no effect on the documents and calculations which ultimately supported the Arbitration Award. For example, Calloway's calculations for presentation at the Arbitration Proceedings were prepared long after the Calloway memorandum was prepared. Indeed, the Calloway memorandum -- mischaracterized by Nordell as a "Report" -- is Nordell's ultimate red herring.

charges conservatively at one times actual salary, which was 1/3 of what Triton normally charged (it was also 1/3 of what was customary in the industry). He included the payments for rigs based on evidence showing when cash payments were made -- cash, not so-called inflated purchase orders. His calculations did *not* include the alleged "bribes", which were never proven by Nordell.

The result of these admitted documents and testimony lead to the following calculation supporting the Arbitration Award:

KPMG October 11, 1990 Report -- Nordell's Exhibit 54 -- showing Nordell deficit as of September 30, 1990	$663,402.00
Overpayment to Nordell due to recalculation on cash basis by Calloway in Triton's Exhibits VVV and ZZZ	329,053.00
Less Excess Joint Interest Billing for 25 days of November 1989 per Nordell's Exhibit 33 (25/30ths of $580,323.00)	(483,741.00)
	508,714.00

This is precisely the amount of adjustments in favor of Triton contained in the Arbitration Award. (Nordell Appendix B, APP-26-28.) There is no evidence before this Court -- and Nordell can point to none -- that alleged improper payments to Pertamina or inflated invoice amounts affected the calculations made by Calloway or KPMG.

4. The testimony supporting an award against Nordell and in favor of Triton.

In its Petition, Nordell relies on misleading and materially incomplete portions of the arbitration testimony of

Messrs. Calloway, McDonough, Murphy, Poulton and Maupin to urge this Court to review the Arbitration Panel's implicit *fact finding* against Nordell on the so-called fraud issue, which was confirmed by the District Court and affirmed by the Ninth Circuit. All of the testimony Nordell urges in its Petition was heard and considered by the Arbitration Panel. In fact, each of the issues now raised by Nordell was hotly contested by Nordell and Triton. After considering such testimony, the Arbitration Panel found against Nordell.

Further, should this Court undertake a review of the factual testimony offered by Nordell, the entire context of the testimony of these witnesses reveals sufficient support in the record for the factual findings made by the Arbitration Panel. (Nordell Appendix A, APP-10.)[5]

The testimony of Calloway, McDonough, McAdoo, Poulton, Murphy, Maupin and Holdoway, when taken as a whole, clearly support the decision below.

Calloway Testimony

Nordell admitted in discussions with the Arbitration Panel off the record that the matters discussed in the Calloway memorandum and testimony did not harm Nordell. Moreover, the matters had no effect on Calloway's calculations on Triton's Arbitration Exhibit VVV -- which ultimately supported the Arbitration Award by the Arbitration Panel. (CR 68, Keever Declaration 9/12/91, ¶ 11.) Mr. Calloway explained the impact of

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[5] In its Petition, Nordell continually confuses two distinct accounting concepts for the ENIM Project: net project investment and cost recoverable amounts. "Net project investment" involved Triton's relationship with Nordell, and Veronex. "Cost recoverable amounts" involved accounting procedures with Pertamina, the state oil agency of Indonesia. The formula for determining net project investment by Triton ($21 million invested) was different from the annual calculation of matters that could go into the cost pool for ultimate cost recovery from Pertamina. Pertamina purchased the oil produced from the ENIM Project.

Nordell's Arbitration Exhibit 90, the so-called "Calloway Report":

> "To my understanding, it did not affect either one on the carry, or on the project investment [the $21 million Triton obligation which was satisfied on November 25, 1989 according to the Arbitration Award]."[6]

(Nordell Appendix G, APP-66.) Did Mr. Calloway or anyone working with him have the intent of fooling around with the project records?

> "Absolutely not."

Did Mr. Calloway or anyone working with him alter or modify the books and records of the project?

> "We did not."

(Appendix 8, APP-24.) Calloway's testimony also indicates that he detected nothing of significance that affected Triton's relationship with Nordell. If Nordell's allegations that Triton paid Pertamina auditors were true -- and there was *no* testimony by a person with first-hand knowledge that this happened -- the payments were no more than facilitating payments to establish that certain items were cost recoverable and to be paid by Pertamina. (Nordell Appendix G, APP-58.) These determinations would benefit Nordell, not harm it. Calloway described the payments, if any, in his testimony as "facilitating payments." *Id.* He also testified that:

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[6] Nordell's alleged motives for Triton's conduct defy logic. If Triton were so bent on defrauding Nordell, why would Triton have sent Calloway *back* to Indonesia to audit the records and to prepare reports for the Arbitration Proceedings? If Triton were truly intent on pursuing corrupt practices, Calloway would be the *last* person, not the first, whom Triton would send back to the ENIM Project.

> "There was an attempt to make things cost recoverable, in a foreign environment where that was necessary sometimes."

(Appendix G, APP-60.) As explained in footnote 5, "cost recoverable" deals with the cost pool for purposes of Pertamina payments, and is not a part of the net project investment equation relating to Triton's $21 million relationship with Nordell under the Farmout Agreement.

McDonough Testimony

Jim McDonough was a Triton Energy employee. He assisted in the purchase of three drilling rigs in the United States for the ENIM Project. He testified that he was instructed by Mr. Rich McAdoo, a TII employee -- who was employed by Nordell during the Arbitration Proceedings -- on procedures involving purchase orders for three drilling rigs. The rigs were bought at an auction in the United States in July 1989. McDonough testified "he had no idea" whether the purchase orders were even used by Triton management for any purpose. (ER 141, Exh. R, Tr. 1610.) He further testified that he did not know if the joint interest account (in which Nordell participated) was charged for the rigs. (Appendix 9, APP-30.) Nordell never introduced any evidence, nor did its auditors find, that any improper purchase order was used by Triton for anything, much less in its accounting of the ENIM joint interest account.

McAdoo Testimony

Rich McAdoo was the general manager of the TII office in Jakarta until December 1989. Just before the Arbitration Proceedings, he left TII and became an employee of Nordell, or its parent, Veronex (the record was unclear). The alleged rig overstatements about which Nordell argues occurred, if at all, while McAdoo was in charge of the TII Jakarta office. McAdoo was under Nordell's control during the Arbitration Proceedings.

McAdoo denied any wrongdoing in his testimony before the Arbitration Panel. (Appendix 10, APP-35-38.) McAdoo denied that rig purchase orders were used to charge the net project investment account to the detriment of Nordell. In fact, McAdoo stated that McDonough had saved the ENIM Project, and therefore, Nordell, $3 million. *Id.*

Poulton Testimony

Rick Poulton was a TII employee for several months in Jakarta. He was hired by TII to review certain ENIM Project accounts. He was not employed by TII or Triton Energy by the time the Arbitration Proceedings commenced in October 1990. He did not complete his work before he left TII. He was called as a witness by Nordell.

Poulton testified that he attempted to establish an "inventory-in-transit" account while conducting his work at Triton. His failure to complete this task required Triton to engage KPMG, the international accounting firm, to complete the job in early 1990. Moreover, Poulton actually confirmed that Triton was *not* conducting illegal or fraudulent accounting practices:

Flegle: "And you also said that Mr Jones refused to implement the [allegedly unlawful] procedures. Right?

Poulton: That's correct.

Flegle: And so, to your knowledge, the procedure was never implemented. Is that correct?

Poulton: Yes, to my knowledge, it was not implemented. To my knowledge, Mr Jones refused to cooperate with it and at that point it was abandoned.

Flegle: *So, you're not here today to tell the panel that documents that were sent to Nordell were based on an illegal procedure, are you?*

Poulton: *No."*

(ER 141, Exh.R, Tr. 735-736.) (emphasis supplied). While Nordell paints the picture that the "inventory-in-transit" account created by Poulton somehow reflected inventory never received by Triton, Poulton testified that the amounts in the account could have reflected legitimate materials that were received. (Appendix 11, APP-40-41.) Poulton further did not have any personal knowledge of any payments that could be construed as violations of the Foreign Corrupt Practices Act. (Appendix 11, APP-42.) He could not even testify concerning how his purported "inventory-in-transit account" might affect the damage issues to be decided by the Arbitration Panel. (Appendix 11, APP-40.) Finally, any alleged "findings" of Poulton were premature in light of the fact that he never completed his work. (Appendix 11, APP-41.)

Murphy Testimony

Pat Murphy, a Triton employee, was asked about fraudulent accounting practices, or the possibility of fraudulent accounting practices. His response?

> "I think Bill [McClure] was confused. Bill . . . makes rash statements in [Nordell's] Exhibit "7." The way I recall this conversation . . . this is taken out of context . . . there was additional conversation. My conclusion was Bill was confused."

(ER 141, Exh. R, Tr. 2103-04).

Maupin Testimony

Paul Maupin was Nordell's *own auditor.* He was hired by Nordell's parent, Veronex. He conducted a "defalcation" audit of ENIM Project records in early 1990. This audit was after Nordell demanded arbitration. Maupin could find no evidence of

fraud by Triton. (ER 141, Exh. R, Tr. 980, 1017-18).[7] Maupin failed to properly request information which he later alleged was crucial, failed to notify Triton of any problems concerning access to the information, and failed to discuss his findings with Triton upon his departure or anytime thereafter, as he was required to do. (ER 141, Exh. R, Tr. 974, 997) (Appendix 13, APP-57-58.) After Maupin departed, Triton received no information from him concerning his so-called audit exceptions. *Id.*

Holdoway Testimony

Graham Holdoway was an accountant employed by KPMG Hanadi Sudjendro & Rekan (KPMG) in Jakarta. KPMG was hired by TII to advise regarding the internal recordkeeping of the ENIM Project. KPMG's help was needed because Nordell admittedly left the ENIM Project records in complete disarray in 1988. TII, as operator, had to organize the mess. Mr. Holdoway testified at Nordell's request during Nordell's case-in-chief. (Appendix 12.) After KPMG performed its work, and as part of its work, KPMG issued its report of October 11, 1990. In the report, KPMG found that Nordell had a deficit, or cash obligation owed to Triton, in the amount of $663,402.00. (Appendix 12, APP-47-48.) This was one of the numbers used by the Arbitration Panel in calculating the Arbitration Award. Among other things, Holdoway testified that, in his review of the accounting records, he found no evidence of fraud committed against Nordell. (Appendix 12, APP-46-48-49.)

C. Revisions, Corrections and Additions to Petitioner's Procedural Discussions

Throughout the Petition, Nordell makes erroneous observations about the procedural development of the Arbitration

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[7] Nordell's statement that "Calloway never even ordered a fraud audit," therefore, is irrelevant since Nordell itself conducted a fraud audit. Petition, p. 21. Nordell could find no evidence of fraud by Triton.

Proceedings and other matters unrelated to this Court's decision regarding certiorari. Triton will briefly discuss these matters here.

1. The Arbitration Panel's request for further information.

Nordell mischaracterizes the Arbitration Panel's supplemental request for information in November 1990. The request concerned a damage calculation prepared by Calloway. Nordell further misrepresents the nature of the circumstances surrounding the Panel's request. From the beginning to the end of the Arbitration Proceedings, the chief arbitrator, Mr. Armour, continually emphasized the Panel's desire to allow and consider any evidence any of the parties wished to submit. For example, during the proceedings, he stated:

> We intend to permit any testimony or evidence to come into this case from the time it started till the time it ends. And whether its oral or written, we've permitted it to come in and we think that we shouldn't vary from that procedure. There are a lot of accusations back and forth -- you didn't do it, you didn't do this, or you said this or you said that. But I think we want to hear everything and see everything that pertains to the issues here and its important. Now what weight we give to it, is another matter . . . We think it's important to hear what every party has to say.

(Appendix 13, APP-61.)

On November 15, 1990, the Arbitration Panel forwarded a letter to *both* Triton and Nordell requesting additional information relating to three exhibits presented in the Arbitration Proceedings concerning, primarily, certain damage calculations prepared by Calloway. (Nordell Appendix I, APP-98-99.) Nordell, on November 16, responded to the Arbitration Panel's letter with its own explanation and interpretation of the exhibits

referenced. In fact, Nordell referred the Arbitration Panel to its explanation of the exhibits "in significant detail" in its "Arbitration Brief Re: Testimony of Michael Calloway." (CR 14, Ex. I.) Despite the fact that Nordell had already responded to the Arbitration Panel's letter, Nordell sent a further letter requesting an opportunity to respond ("if it so desires") to any submissions Triton would make "concerning the exhibits or otherwise." *Id.*

On November 19, 1990, pursuant to the Arbitration Panel's request, Triton forwarded correspondence to the Arbitration Panel further explaining the referenced exhibits and the calculations contained therein. The letter contained attachments of Calloway's testimony during the Arbitration Proceedings relating to the exhibits and his written explanation thereto. (Nordell Appendix J, APP-100-114.) On November 20, 1990, the Arbitration Panel requested Nordell to respond *immediately,* if it so desired. (Appendix 6.) Triton never received a further response from Nordell. (ER 141, ¶41.) The record additionally does not reflect that the AAA ever received a further response from Nordell. *Id.*[8]

During this same time period Nordell submitted almost daily letters to the Arbitration Panel from November 16, 1990 through December 3, 1990, requesting "interim injunctive relief." (ER 141, ¶40-41, Exh. M1-7.) The letters contained wild and unsupported allegations concerning TII's employees in Indonesia and Triton's financial condition. These letters caused serious morale problems in the TII office in Jakarta.

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[8] Nordell contends it submitted a further response letter on November 30, 1990, ten days after the "immediate" request by the Arbitration Panel. Ms. Pelo, the AAA administrator, typically would acknowledge receipt of letters via confirmation correspondence to all parties. No such correspondence was ever sent to the parties confirming receipt of a November 30 letter from Nordell. In fact, Nordell did not send the November 30 letter. (ER 141, ¶41.)

As a result of this paper barrage sent by Nordell and the Arbitration Panel's finding that the allegations were untimely and without merit, the Arbitration Panel, on December 3, 1990, issued an order that it would not consider or rule on any "alleged factual information contained in these letters" and further ordered that no such future submissions occur. (Nordell Appendix L, APP-136-138.)

2. The Arbitration Panel's factual finding that Nordell, not Triton, acted in bad faith.

It is truly amazing that Nordell argues the purported application of the doctrine of unclean hands against Triton. The Arbitration Panel found that Nordell, not Triton, was guilty of bad faith and harassment in its acts committed against Triton. The Arbitration Panel awarded equitable relief in favor of Triton and against Nordell based on these factual findings and the requests of the parties for equitable relief. As the Arbitration Award clearly sets forth, the Arbitration Panel redistributed the parties' interests in favor of Triton "in view of both parties' request for an adjustment of interest of each in the [ENIM] Project and in view of *Nordell's demonstration of bad faith in not paying cash calls and incessant harassment of Triton's operations.*" (Nordell Appendix B, APP-28-29.) (emphasis supplied)

3. Confidentiality.

Nordell paints a completely misleading picture concerning purported issues of secrecy. The focus of Nordell's complaint is the sealing of the Calloway testimony as it related to the Calloway memorandum. What Nordell fails to tell this Court is that (i) the contract at issue contained a confidentiality agreement between Nordell and Triton (CR 68); (ii) confidentiality was extremely important to the parties' working relationship with Pertamina, the Indonesian national oil agency, as well as the safety and well-being of Indonesian nationals and ex-patriates

working on the ENIM Project (CR 68); (iii) Nordell *agreed* during the Arbitration Proceedings that the testimony regarding the Calloway memorandum and the document itself would be sealed and not copied (Appendix 13, APP-60-61.); (iv) Nordell assured the parties and the Arbitration Panel that the materials would not be used outside the Arbitration Proceedings (*Id.*); and (v) the Ninth Circuit entered an order of seal regarding one of the several appeals in this case. Thus, the sealing of the Calloway testimony was not any type of "cover-up" or conspiring act; rather, it was an order carried out by the Arbitration Panel pursuant to the terms of the contract and *Nordell's* agreement.[9]

4. The unrelated Janacek Case.

The *Janacek* litigation is not relevant to the Questions Presented by Petitioner. See Petition, p. i. The issues in *Janacek* involved state law wrongful termination claims by a former employee against Triton Energy in a Texas state court. (See Triton's Response in Opposition to Nordell's Request for Judicial Notice filed with the Ninth Circuit on December 7, 1992.) The accounting documents at issue were completely separate from any introduced in the Arbitration Proceedings. Additionally, no final judgment was entered on the jury findings in *Janacek.* Thus, no accounting fraud was "proven" in the case as alleged by Nordell. *Id.*

REASONS WHY THE PETITION SHOULD BE DENIED

The Ninth Circuit decision is not in conflict with *W.R. Grace* and *Misco,* both of which affirmed arbitration awards. The matters raised by Petitioner are matters of fact which have been properly found, repeatedly, in favor of Triton. Moreover, there is no overriding question of such significance here that justifies the

[9] Before Nordell received the Arbitration Award, it did not find the need for confidentiality of the Arbitration Proceedings to be offensive.

exercise of this Court's discretion to grant a writ of certiorari. In fact, the matters at issue here are matters that affect only the parties involved and do not rise to the level of national or precedential significance.

A. The *W.R. Grace* and *Misco* decisions are not in conflict with the decision below.

As previously discussed, this Court's decisions in *W.R. Grace* and *Misco* do not conflict with the Ninth Circuit's decision below. *See* Supreme Court Rule 10.1(c). For this reason alone, this Court need go no further in the analysis of Nordell's Petition.

However, even if it is assumed that there is some conflict — which Triton vigorously denies — the policy concerns expressed in *W.R. Grace* and *Misco* are satisfied by the Ninth Circuit's decision below.[10]

This Court first outlined the public policy exception to enforcement of arbitration awards in *W.R. Grace & Co. v. Local*

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[10] It should be noted that *W.R. Grace* and *Misco* involved review by the district court of labor arbitration awards. The policy concerns inherent in reviewing labor awards are different from the concerns in reviewing commercial arbitration awards, as here. In fact, the proper policy articulated in the Ninth Circuit is that labor arbitration cases "are not relevant in the commercial arbitration context." *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1062 (9th Cir. 1991); *see also Raytheon Co. v. Automated Business Sys., Inc.*, 882 F.2d 6, 10-11 (1st Cir. 1989) ("the concerns which may warrant such a rule in a labor arbitration field are not present in the commercial arbitration context"). Other federal courts have suggested that the public policy exception to enforcement of arbitration awards announced in *W.R. Grace* and *Misco* apply only to labor arbitration awards. *See, e.g., Service Employees Intern. v. City Cleaning Co.*, 982 F.2d 89, 91 (3rd Cir. 1992); *Chrysler Motors Corp. v. Internat'l Union*, 748 F. Supp. 1352, 1359 (E.D. Wis. 1990); *Maggio v. Local 1199*, 702 F. Supp. 989, 991 (E.D.N.Y. 1989), *aff'd*, 880 F.2d 1319 (2nd Cir. 1989), *cert. denied*, 493 U.S. 936, 110 S.Ct. 329, 107 L.Ed.2d 319 (1989). At any rate, these distinctions are not important for this Court's purpose. The decision below does not conflict with the Court's prior decisions.

Union 759, 461 U.S. 757, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983). In *W.R. Grace,* the Court reviewed a conflict concerning a collective bargaining agreement, which gave seniority to certain male employees, and a consent decree between the employer and the EEOC designed to settle a sex discrimination suit under Title VII. When the male employees lost their seniority because of implementation of the consent decree, they requested arbitration. An arbitrator held that, irrespective of the consent decree, the employer had breached the seniority provisions of the agreement and ruled in favor of the employees. 461 U.S. at 759-64.

In the course of confirming enforcement of the arbitration award, this Court discussed the public policy exception. Beginning with the proposition that, "[a]s with any contract . . . a court may not enforce a collective-bargaining agreement that is contrary to public policy," the Court ruled that questions of public policy were properly answered in the courts and that, if a court found that an arbitral award violated public policy, it would be "obliged to refrain from enforcing it." *Id.* at 766.

The Court then sought to define "public policy." For an asserted public policy to be sufficient to preclude enforcement of an arbitrator's award, it had to be "explicit;" furthermore, it had to be "well defined and dominant." *Id.* Finally, such a policy could be satisfactorily demonstrated only " 'by reference to the laws and legal precedents' " and could not be the product of the parties' or the courts' " 'general considerations of supposed public interests'." *Id.* (quoting *Muschany v. United States,* 324 U.S. 49, 66, 65 S.Ct. 442, 451, 89 L.Ed. 744 (1945)).

The Court clarified the narrow scope of the public policy exception in *United Paperworkers International Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987). In *Misco,* an employee was discharged after marijuana was found by police in his home and a lighted marijuana cigarette was seen in his car with marijuana smoke in the air. The

employee's job duties included operating hazardous machinery. The arbitrator ordered reinstatement "in his old job or an equivalent one for which he was qualified" with backpay, finding that the employer had failed to prove that the employee had actually possessed or used illegal substances while on company property and thus that he had violated any company rule. 484 U.S. at 34, 45.

The district court vacated the award. The Fifth Circuit affirmed the district court's decision vacating the award. The Fifth Circuit reasoned that reinstatement would violate the public policy "against the operation of dangerous machinery by persons under the influence of drugs or alcohol." *Misco, Inc. v. United Paperworkers Intern. Union, AFL-CIO,* 768 F.2d 739, 743 (5th Cir. 1985). This Court unanimously reversed. The Court held that the circuit court had failed to follow the dictates of *W.R. Grace* with respect to the articulation and application of a public policy necessitating the invalidation of the arbitrator's award.

The Court began by reaffirming the "explicit" and "well defined and dominant" requirements expressed in *W.R. Grace,* saying that the result in that case had "turned on [the Court's] examination of whether the award created any explicit conflict with other 'laws and legal precedents' rather than an assessment of 'general considerations of supposed public interests.' " 484 U.S. at 43 (quoting *W.R. Grace,* 461 U.S. at 766). "At the very least," Justice White continued for the Court, "an alleged public policy must be properly framed under the approach set out in *W.R. Grace,* and the violation of such a policy must be clearly shown if an award is not to be enforced." 484 U.S. at 43. The Court stated that, for the public policy exception to apply, the enforcement of the award must violate public policy.

The Court concluded that the Fifth Circuit's articulation of a general "public policy" against drug use by employees violated

the strict requirements of the *W.R. Grace* formulation; that no violation of the public policy it articulated had been "clearly shown" in any case; and that the Fifth Circuit had, in its public policy analysis, improperly drawn an inference at odds with the arbitrator's finding. 484 U.S. at 44-45. The Court stated:

> The parties did not bargain for the facts to be found by a court, but by an arbitrator chosen by them . . . Nor does the fact that it is inquiring into a possible violation of public policy excuse a court for doing the arbitrator's task.

Id. at 45. The Court noted that it was not the function of the reviewing court to upset an arbitration award merely because of the court's own view that a particular public policy was threatened. *Id.* The Court further made clear its decision did not announce an expansive interpretation of the public policy exception. The Court announced that: "[*W.R. Grace*] does not sanction a broad judicial power to set aside arbitration awards as against public policy." 484 U.S. at 43.

First, in this case, the Arbitration Panel did not find that Triton violated any public policy. As a result, Nordell's attempt to use the public-policy exception is wholly improper. *See Misco,* 484 U.S. at 44-45 (because the arbitrator made no findings of a public policy violation, the court of appeals had no authority to vacate the award on public policy grounds). *See also Union Pacific Railway Co. v. United Transportation Union,* 3 F.3d 255, 261, 264 (8th Cir. 1993) (reviewing courts are not allowed to make factual findings when setting aside arbitration awards on public policy grounds); *United States Postal Service v. National Association of Letter Carriers, AFL-CIO,* 839 F.2d 146, 148 (3rd Cir. 1988) (reviewing court cannot second-guess an arbitrator's fact finding where alleged violation "depends on drawing factual inferences not made by the arbitrator"). For example, to accept Nordell's argument, this Court would be required to make factual findings that Triton committed fraud or violated the

FCPA, when the Arbitration Panel made exactly contrary factual findings.

Second, even if the Arbitration Panel erroneously applied the public policy exception in the Arbitration Award — an event Triton vigorously argues did not occur, this would not support Nordell's position that the Ninth Circuit acted contrary to the *W.R. Grace* and *Misco* decisions. *See Seymour v. Blue Cross/Blue Shield,* 988 F.2d 1020 (10th Cir. 1993) (refusing to vacate award on public policy grounds because of arbitrator's error in interpreting the law); *Board of County Com'rs of Lawrence County, Ohio v. L. Robert Kimball and Associates,* 860 F.2d 683, 688 (6th Cir. 1988), *cert. denied,* 494 U.S. 1030, 110 S.Ct. 1480, 108 L.Ed.2d 617 (1990).[11]

Third, an enforcement of the Arbitration Award does not violate public policy. Typically, the public policy exception is addressed by courts when enforcement of the award itself compels one of the parties to take action which directly conflicts with public policy. *Revere Copper and Brass Inc. v. Overseas Private Inv. Corp.,* 628 F.2d 81, 83 (D.C. Cir. 1980), *cert. denied,* 446 U.S. 983, 100 S.Ct. 2964, 64 L.Ed.2d 839 (1980). *See, e.g., Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Intern.,* 861 F.2d 665, 671 (11th Cir. 1988), *cert. denied,* 493 U.S. 871, 110 S.Ct. 201, 107 L.Ed.2d 154 (1989) (enforcement of award violated public policy because it required reinstatement of pilot who had piloted aircraft while drunk); *Iowa Elec. Light and Power Co. v. Local Union 204 of the Int'l Bhd. of Elec. Workers,* 834 F.2d 1424, 1428 (8th Cir. 1987)

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[11] Any argument by Nordell that the arbitrators acted in manifest disregard of the public policy exception also fails. *See O.R. Securities, Inc. v. Professional Planning Assocs.,* 857 F.2d 742, 747 (11th Cir. 1988) (to vacate an award on this ground, "there must be a showing in the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it"); *see also San Martine Compania De Navegacion, S.A. v. Saguenay Terminals Ltd.,* 293 F.2d 796, 801 (9th Cir. 1961); *Jenkins v. Prudential-Bache Sec., Inc.,* 847 F.2d 631, 634 (10th Cir. 1988).

(enforcement of award violated public policy because it required reinstatement of nuclear power plant machinist who had deliberately pulled fuse on containment area door in violation of NRC rules); *American Postal Workers Union AFL-CIO v. U.S. Postal Service,* 682 F.2d 1280, 1286 (9th Cir. 1982), *cert. denied,* 459 U.S. 1200, 103 S.Ct. 1183, 75 L.Ed.2d 431 (1983) (arbitration award will not be enforced if it forces a party to perform a manifestly illegal act).

The public policy exception is inapplicable here because the award does not compel either party to take action which conflicts with public policy. There is no manifestly illegal act which Nordell is forced to perform. Rather, the Arbitration Award requires a readjustment of contractual interests between the parties as well as monetary damages. This is relief which was expressly requested by Nordell. (Appendices 4-5.) Thus, Nordell's remaining authorities --neither of which involve arbitration -- are inapplicable. *See, e.g., Hurd v. Hodge,* 334 U.S. 24, 68 S.Ct. 847, 92 L.Ed. 1187 (1948) (enforcement of final judgment would violate federal and constitutional restriction against racial discrimination); *and McMullen v. Hoffman,* 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899) (contract provisions required performance of illegal acts).

Moreover, in examining the enforcement of the terms of the Award itself, Nordell's arguments fail. This Court held in *Misco* that, once the public policy is identified, the party seeking to vacate the award must demonstrate a sufficient link between enforcement of the award and a violation of the policy. 484 U.S. at 44. Here, no such link exists. Enforcement of the Award will not--by any stretch of the imagination--perpetrate a fraud or cause an FCPA violation.

Nordell's argument completely misses the mark. It argues, at most, that *its allegations* of fraud--which the Arbitration Panel rejected--are sufficient to show that enforcement of the Award is

an endorsement of "fraud," even though such "fraud" was never proven. Unproven allegations of fraud are not sufficient to overturn an arbitration award based on supposed considerations of public policy. The Ninth Circuit reached the same conclusion, basing its decision in part on *Osceola County Rural Water System, Inc. v. Subsurfco, Inc.*, 914 F.2d 1072 (8th Cir. 1990). (Nordell Appendix A, APP-10-11.)

In *Subsurfco,* an arbitration was conducted between Osceola, the operator of a rural water system, and Subsurfco, a contractor. The contract between the parties provided that Subsurfco would construct a 680-mile system primarily by use of the "open trench method." After difficulties arose, the parties modified their agreement to permit Subsurfco to use the "plow-in" method. This procedure required the pipe sections to be glued rather than sealed with rubber gaskets. Osceola terminated the contract, and Subsurfco demanded arbitration. Osceola's primary complaint concerned excessive leakage in the system. The Arbitration Panel found that Subsurfco substantially completed the work under the contract and had performed in accordance with Osceola's design specifications.

Osceola brought suit to vacate the award because the award allegedly "violated public policy because the Arbitration Panel ignored the testimony of two of Subsurfco's former employees that they had been ordered . . . to falsify the results of pressure testing." The district court agreed and vacated the award.

The Court of Appeals overruled the district court, stating:

> The arbitrators heard testimony from some twenty witnesses over a six-week period, receiving in evidence several thousand documents. Each of the arbitrators had lengthy experience in the construction industry . . . [W]e conclude that the district court erred in holding that the award violated public policy because it in effect rewarded Subsurfco for falsifying the results of pressure testing. As the district court recognized, arbitrators are not required to elaborate on the reasoning in support of an award. There is nothing in the record to suggest that the arbitrators accepted as true the testimony of the former employees (both of whom were employed by Osceola at the time of their testimony before the arbitrators) regarding the falsification of test results. The arbitrators brought their collective experience to bear on the extensive testimony and voluminous documentary evidence received and then entered an award in accordance with their understanding of the meaning of the contract provisions. That was their prerogative and duty, and we see no justification for setting aside their award.

914 F.2d at 1075.

Similarly, here, the Arbitration Panel brought their collective experience to bear and rejected the claims of fraud raised time and time again by Nordell. There is nothing to suggest that the Arbitration Panel accepted as true any testimony elicited by Nordell regarding alleged falsification of the books and records of the ENIM Project. In fact, they rejected it. The Court's opinions in *W.R. Grace* and *Misco* are not in conflict with the Ninth Circuit's decision below.

B. Neither the decision below nor the Arbitration Award nor the District Court's Final Judgment found that Triton committed violations of the Foreign Corrupt Practices Act; moreover, these issues were not properly preserved by Petitioner on appeal.

Nordell alleges that Triton violated the Foreign Corrupt Practices Act, that the Arbitration Panel ignored such alleged violations, and that, as a result, the Award violates public policy. Nordell never argued alleged violations of the FCPA to the District Court or the Ninth Circuit as a reason to vacate the Award. To raise this issue for the first time before this Court is improper and should not be considered by the Court. *See Taylor v. Freeland & Kronz,* ___ U.S. ___, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992) (this Court would not consider argument raised for first time in opening brief on merits, which had not been raised or resolved in lower courts).

In the alternative, even if the Court considers the merits of this argument, the argument does not support granting a writ of certiorari. First, the Arbitration Panel did not make a factual finding that Triton committed a violation of the FCPA. To the contrary, the terms of the Award do not reflect any such violation. Second, it is not the reviewing court's function to decide independently whether the conduct of the prevailing party violated the FCPA, or any similar statute. *Misco,* 484 U.S. at 45. Third, even by Nordell's own arguments, it has failed to show that such a violation has occurred. Triton has not committed any acts which could be characterized as done in order to obtain or retain "business for or with, or directing any business to, any person" within the parameters of the statute at issue and the case law. *See* 15 U.S.C.A. § 78 dd-1(a)(1) (West Supp. 1993). Nordell's arguments that such unproven allegations preclude enforcement of the Award as against public policy, should be rejected.

C. Neither the decision below nor the record supports the application of the unclean hands doctrine against Triton as an explicit, well-defined and dominant federal public policy exception to the enforcement of commercial arbitration awards.

Nordell finally argues that the Ninth Circuit's Memorandum purportedly conflicts with the *Misco* decision because, allegedly, enforcement of the Award would violate the "unclean hands doctrine." Petition, p. 27. Nordell relies on California state law to support its arguments. This is insufficient as a matter of law to invoke this Court's jurisdiction. *See* Objection to Jurisdictional Statement.

Additionally and alternatively, the unclean hands doctrine does not conflict with the decision of the Ninth Circuit below.

Nordell first argues that the Arbitration Panel ignored the doctrine of unclean hands. Appellants rely on Section 3517 of the California Civil Code that states, "no one can take advantage of his own wrong." The Arbitration Panel did not find that Triton committed any "wrong." Moreover, the Arbitration Panel did not find that Triton "took advantage" of its "own wrong." Additionally, the record does not reflect that the Arbitration Panel recognized this maxim and chose to ignore it.

The loosely articulated unclean hands doctrine applies against a party in a civil judicial proceeding who is found, as a matter of fact, to have committed acts of fraud, unconscionability or bad faith towards the party against whom it has proceeded. *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery,* 324 U.S. 806, 814, 65 S.Ct. 993, 997, 89 L.Ed. 1381 (1945); *International Union, Allied Industrial Workers v. Local Union No. 589,* 693 F.2d 666, 672 (7th Cir. 1982). Nothing in the record before this Court shows that the Arbitration Panel found that Triton committed acts of fraud, unconscionability or bad faith

towards Nordell. There is no indication that the Panel recognized this maxim but chose to ignore it. The record reflects fact findings that Nordell committed "bad faith acts toward the party it has proceeded against"--Triton. If anyone is guilty of unclean hands, it is Nordell.

The California cases cited by Nordell do not support its argument. *See, e.g., Buck v. Dahlgren,* 100 Cal. Rptr. 462 (Cal. App. - 4th Dist. 1972) (non-arbitration case in which the court applied unclean hands to prelude recovery by party participating in usury transaction); *Richman v. Bank of Perris,* 282 P. 801 (Cal. App. - 4th Dist. 1929) (non-arbitration case in which party was barred from equitable relief where he "stepped into shoes" of debtor who "robbed the bank" and committed a criminal act). Moreover, these cases address California state doctrines, not federal laws or policy. Triton has found no case in which a federal court has vacated an arbitration award based on the unclean hands doctrine under the public policy exception. Triton suggests that there are none and for good reason. The "unclean hands doctrine" does not rise to the level of explicit, well-defined and dominant federal public policy sufficient to satisfy the *Misco* test.

CONCLUSION

For the reasons set forth herein, Triton requests that the Court deny Nordell's Petition for Writ of Certiorari. Nordell has shown this Court no valid basis to exercise its jurisdiction to hear this case. The decisions and policy concerns expressed by this Court in *Misco* and *W.R. Grace* are not in conflict with the opinion below. The factual findings by the Arbitration Panel do not support Nordell's requested relief. It would be contrary to the well-established decisions of this Court to make findings of fact which are contrary to those found by the proper finder of fact in this case: the Arbitration Panel.

DATED: January 19, 1994.

Respectfully submitted,

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APPENDIX

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APPENDIX 1

14.1 *Arbitration:* Any controversy or claim arising out of or relating to this Agreement, or the breach or invalidity thereof, shall be settled by the Commercial Arbitration Rules of the American Arbitration Association (as existing on the date of this Agreement), which proceedings shall take place in the Republic of Singapore. Any Party shall have the right to require that the arbiter(s) be person(s) familiar with petroleum industry commercial practices. All Parties to the arbitration shall be treated and regarded as if all parties are United States of America citizens and residents for the purposes of the interpretation and application of the Rules before the Tribunal. The proceedings and findings shall be in the English language. The judgment upon the award rendered by [the] arbiter(s) may be entered in any court having jurisdiction thereof.

APPENDIX 2

KPMG Hanadi Sudjendro & Rekan
Registered Public Accountants
[Addresses Omitted in Printing]

October 11, 1990
Ref: 249/BJ/90

Mr Phil Keever,
Triton Indonesia, Inc.,
Griya Ampera Building, 2nd Floor,
JI Griya Ampera Raya No 18,
JAKARTA 12560

Dear Sir,

Cash Position of Non-Operator Partners

1. We have been requested by Mr Bill McClure (as per our proposal letter to him dated August 26, 1990) to report to Triton on compliance with cash obligations by the non-operator partners in the Enim project in Indonesia.

2. This is as a follow-up to our previous report to Mr McClure dated June 20, 1990 which examined the cash call, joint interest billing and revenue sharing procedures in place, and provided recommendations to improve the clerical efficiency of those procedures.

3. As part of that evaluation we examined the status, at that time, of each partners' contributions. We have now updated the schedules to September 30, 1990 and revised the format

to reflect the net obligation of the non-operator partners on a monthly chronological basis.

4. On the advice of Triton Indonesia's legal counsel that Triton Indonesia has no legal obligation to submit cash calls and JIB's to itself, this report does not consider the status of Triton Indonesia as operator.

5. A glossary of terms and abbreviations used in this report is attached as Appendix 5.

Background

6. Effective October 1, 1988, Triton Indonesia and Nordell entered into a Farm-out Agreement (including a JOA) by which Triton Indonesia acquired a 60% interest in the Enim project in Indonesia. During 1989, Triton Indonesia assigned 10% of its 60% interest (i.e. 6%) in the project to Triton Oil (NZ). This transfer has been treated as being retroactive from October 1, 1988.

7. The JOA provides for Nordell's interest to be carried by Triton Indonesia for a period to be determined in terms of financial contribution (US$ 21 million). After this period Nordell is obligated to contribute its 40% interest in cash calls and JIB's. Nordell remained entitled to continue receiving its revenue share as prescribed throughout.

8. According to the Enim project accounting records maintained in Indonesia by Triton Indonesia, the interest carry obligation ceased on or about November 3, 1989. Since that date the procedure for monthly cash calls and JIB's became operative.

9. We understand various financial and non-financial disputes have arisen between the parties, a number of which have not been resolved.

We have conducted this review of each partner's compliance with its funding obligations under the JOA. In doing so we have adopted an approach of offsetting revenues and other credits against cash obligations, a practice on which the JOA appears to be silent, except in relation to Defaulting Parties. We note that the practice of offsetting rights against obligations has obvious practical advantages.

Scope

10. Information used for the purposes of preparing this report has been taken from the Indonesian accounting records maintained by Triton Indonesia for the Enim project, particularly with reference to the cash receipts and payments books and bank statements. These records are subject to review and audit by Triton Indonesia head office, Triton Oil (NZ), Nordell, Pertamina and the Indonesian State Auditors, and therefore are subject to amendment.

11. We have not audited the accounting records for the purposes of preparing this report and nothing in this report should be construed as meaning we have audited the amounts stated herein or in the accounting records. In particular, we have not checked or verified calculations of cash calls, JIB's, revenue sharing, or the date of cessation of Nordell's interest carry obligation, as referred to in paragraph 8.

Findings

12. We have scheduled the unfulfilled financial obligations of each non-operator partner for the period from November 1989 to September 1990 and shown how, and to what extent, unpaid cash calls and JIB's have been offset by unpaid revenue sharing and JIB credits.

13. To put the above schedules in a broader context, further schedules are presented to show the unfulfilled obligations of each partner alongside the fulfilled obligations.

14. These are presented as follows (Nov '89 to Sept '90):

Appendix	Contents
1	Summary of Monthly Unfulfilled Obligations - Nordell
2	Summary of Monthly Unfulfilled Obligations - Triton Oil (NZ)
3	Partner Compliance with Cash Obligations - Nordell
4	Partner Compliance with Cash Obligations - Triton Oil (NZ)

15. The schedules presented in the Appendices show that Nordell has made the required contributions to the Enim project until April 1990; subsequent to which it has made no contributions. Unpaid credits in July put Nordell's net position into surplus compared to obligations, reflecting that, in accordance with established procedures, any excess of cash calls would be subsequently credited back to the partner through the JIB procedures.

Since the end of July, the balance of the Nordell account has moved back into deficit. This situation has not been corrected, with a significant deficit balance by the end of September. Subsequent to September 30, 1990, further entries will arise on Nordell's account for JIB obligations from August 1990 on.

16. Late payment of cash calls numbers 5 and 6 in July 1990 meant that Triton Oil (NZ) was in deficit for April through June 1990. Unpaid revenue shares were used to offset other unpaid obligations. Since July 1990, Triton Oil (NZ) has been in surplus. At September 30, 1990, Triton Oil (NZ)

had a surplus balance which was quite significant relative to the size of its interest in the Enim project.

17. The records show that neither of the non-operator partners has maintained full compliance with its Enim project obligations.

    At the end of July 1990 both non-operator partners had virtually clear accounts on their net obligation position to the project. Since then only Triton Oil (NZ) has fulfilled its net obligations.

Disclaimer

18. This report is prepared solely for the purposes of Triton Indonesia and should not be made available to any other party without our prior written approval. For these purposes, we approve the submission of this report to the arbitrators in Singapore in October, 1990 in relation to the arbitration called by Nordell in respect of the Enim project.

19. In accordance with the Firm's policy, we advise that this Firm has no responsibility or liability whatsoever arising from this report to any party other than Triton Indonesia for any loss, whether arising through negligence or otherwise, however caused, or for any omission or error contained herein.

Yours faithfully,

Agung Nugroho Soedibyo
Partner

[Emphasis Supplied]
[Appendices to letter omitted in printing]

APPENDIX 3
(10/25/90)

Summary

KPMG's Nordell Deficit @ 9/30/90:	$(663,402)
JIB: Refund Due Nordell for 11/89	415,140
Revenue: Amount Due from Nordell (Cash)	(329,053)
Amount Due from Nordell @ 9/30/90	$(577,315)

(Adjusted for obligation date of 11/25/90 and cash basis distribution of revenue.)

JIB (11/89)

Amount Billed for 11/89		$498,168
Spent per Day =	$16,605.60	
Days after obligation =	x 5	
Amount should Be Billed =	$83,028.00	(83,028.00)
Refund Due Nordell		$415,140.00

Revenue (Cash Basis)

Revenue Paid NIR [Nordell]: (10/88-1/90)	
Cost Oil & Investment Credit Oil	$4,544,404.75
Profit Oil	491,672.04
Deductions (AMI)	(13,600.00)
	$5,022,476.79
Payable to Nordell: (10/88 - 1/90)	
Cost Oil & Investment Credit Oil	$4,212,565.00
Profit Oil	480,858.81
Deductions	-0-
	$4,693,423.81
Refund Due from Nordell	$ 329,052.98

APPENDIX 4

[NORDELL CLOSING ARGUMENT]

What I'm asking you to do, in lieu of an award of money damages which isn't going to be paid, and in recognition of the fact that Triton's conduct throughout this case has been the conduct of a partner who is in contempt of his obligations to his partner, that Triton has willfully, consciously disregarded its fiduciary obligations; has -- instead of working constructively, has simply sought to hide from us the true facts.

In recognition of all that, *what I'm asking you to do, and in lieu of punitive damages which are never going to paid, is simply to issue an order which should be issued, anyway, under this agreement and under the facts, which is that the operatorship should be surrendered to Nordell forthwith. And if you did just that, we would have an anomalous situation where Nordell is the operator and where Triton continues to have a 60 percent interest in this project.*

Well, that won't work. And in lieu of punitive damages, in lieu of money damages that ain't going to be paid, *I'm going to ask you to issue an order adjusting the equity -- the participating interest in this project in a way that compensates Nordell for the actions which Triton has taken.* And I -- I will say it again. Under the clear terms of the agreement, Nordell is entitled to 100 percent interest in this project. Because of the uncured defaults, the -- the interest of -- of Triton has been forfeited.

That's a harsh -- that's the death penalty. And you may not think that Triton deserves the death penalty in this case. I do. You may not think so. But I think you'd agree with me that under the circumstances, and given the very tenuous position this project is in now, the appropriate remedy is an order that the operatorship be transferred to Nordell at this time, and *an order that an equity -- a participating interest be readjusted as you see fit.*

I'm telling you I think that it ought to be a hundred percent to Nordell. You may look at damages somewhat differently. You may look at Nor -- at Triton's conduct somewhat differently. But under California law, which I've learned quite a lot about in the last several weeks, arbitrators have a tremendous range of power, equitable powers, to fashion a remedy that's just and equitable.

Mr. Flegle began this proceeding by saying he was looking for a divorce, and we told you we were looking for a divorce, too. There's got to be a divorce. And the divorce can be on any basis that you think is fair, just, and equitable under the circumstances. And to my way of thinking, that means the surrender of the operatorship to Nordell with an adjustment of the participating interest to give Nordell its fair share of project revenues.

If you feel that Triton's conduct doesn't justify the death penalty, absolute forfeiture, then Triton can maintain a carried interest in this project.

But that's all up to you. You can make the calculations. You understand the valuations. You understand I think clearly the conduct which has brought us here today, and I think you understand the situation --

(Ms. Graf enters the room.)

MR. WALKER: -- as well as any of us could at this time.

* * *

And I, too -- *I said it before and I'll say it again. I have never seen such interest and real concern on the part of arbitrators. And we all appreciate it, and I thank you very much for everything. We've gotten a very fair and complete hearing. Thank you.*

ARBITRATOR GRUDEM: Thank you.

ARBITRATOR PYBURN: Thank you.

[Emphasis Supplied]

APPENDIX 5

McDermott, Will & Emery
2029 Century Park East
38th Floor
Los Angeles, California 90067-2917
[Remaining Addresses Omitted in Printing]

23302-11

November 19, 1990

VIA FACSIMILE

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Ms. Becky Pelo
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443 Shatto Place, 2nd Floor
Los Angeles, California 90020

RE: Case No. 72 T199 0204 90
Nordell International Resources Ltd. -and-
Triton Indonesia, Inc., Triton Energy
Corporation: and Triton Oil (N.Z.) Limited

Dear Messrs. Armour, Grudem, Pyburn and Ms. Pelo:

We are in receipt of Mr. Flegle's correspondence, dated November 14, 1990, submitted with Triton's Arbitration brief and submit this letter in response thereto. For the convenience

of the Panel, specific responses are in the order of Triton's requests or contentions.

1. *Increased Expenditures Authority:* Nordell strenuously objects to Triton's request that it be granted authority to expend up to $1.5 million for the ENIM Project through December 15, 1990. As described in the Arbitration, under Triton's management, operating expenditures on the Project before capital costs, have averaged approximately $700,000 - $750,000 per month (see Exhibit A7). With the recent staff cut-backs, these expenditures should be reduced from that level. Mr. Flegle's letter fails to either explain the purported "hardship" of the $1,000,000 spending limit or to proffer *any* evidence justifying a request of nearly twice the monthly operating requirements.

Nordell's objection to this request is compounded by the recent disclosure (not from Triton), that Bill McClure and Jack Monk - the senior business and technical staff members respectively in Jakarta - have been terminated, apparently as a consequence of labor proceedings instituted in Jakarta by the Indonesian Government. Since Jack Monk has been responsible for directing all of the technical aspects of the ENIM Project, his absence suggests that, as a practical matter, the project will be in a "maintenance" mode, until December 15, at least.

Although Nordell is operating in an information vacuum, given Triton's refusal to date to provide the contractually mandated financial information, Nordell recommended and the Panel granted an order which gave Triton the flexibility to spend substantially above its operating needs. A further cushion is unjustified and should be denied.

2. *Triton's Documents:* Nordell is in the process of photocopying Triton's documents and is returning them to Mr. Flegle's Dallas office as the copying is completed. Nordell expects the cost of photocopying and returning the documents to be paid by Triton.

3. *Triton's "Damages":* Triton's "request for damages" is an attempt to obfuscate the facts of the case. Nordell's Memorandum delivered November 15 establishes in detail why Triton is not entitled to damages and why the Panel should order Triton's forfeiture of the ENIM Project. In recognition of the reams of information before the Panel, Nordell will only remind the Panel that the Respondents, by admitted breaches, have contractually forfeited all of their rights *and* have legally excused *any* further contactual obligations or performance (including the payment of "cash calls" and JIB's) by Nordell.

As the record amply demonstrates, the excessive nature of Respondents' demands for additional cash advances are improper. Moreover, Triton's cash calls and JIB's were improperly: (a) calculated without respect to outstanding "cash balances"; (b) used JIB's as invoices rather than as mere reconciling statements and (c) included *"non-cash"* items (including, for example, "working capital movement") in the JIB's requested from Nordell. These calculations are particularly troubling since Pat Murphy has testified: (i) the cash calls and JIB's could easily have been calculated on a cash basis by Respondents and (ii) KPMG's "resolution" of the "inventory-in-transit" problem should have resulted, but did *not* result, in a substantial credit to Nordell.

Nordell has disputed, and continues to dispute, all of Triton's mathematical calculations with regard to the cash calls and JIB's. The propriety of *all* cash calls and JIB's can only be assessed after a complete re-computation of all applicable numbers, i.e., the "carry", "net project investment", "remittances", interest, Respondents' own "debit position" vis-a-vis cash calls and JIB's, etc. To date, this has not been done by Triton. Until this task is performed, Triton's alleged "damages" constitute only abstract speculation.

Finally, the panel should not grant *any* relief with respect to Triton's cash calls Nos. 8, 9, and 10. Questions concerning the propriety of these cash calls, which were submitted after Triton purportedly declared Nordell in default, were *not* properly before the panel and therefore must be viewed as another example of Triton's overreaching, especially since Triton failed to supply any of the financial information supporting these cash calls. Moreover, in view of Triton's past failures to contribute its proportionate cash amounts, and the recent downgrading of Triton's credit rating by Standard & Poor's (see attachment A), serious questions have arisen as to Triton's *own* willingness and ability to contribute its past and future shares of the required cash. It would thus be patently unfair for the Panel to grant Triton's requested relief with respect to cash calls Nos. 8, 9 and 10 without granting Nordell a fair opportunity to present its case on these crucial issues.

4. *Communications Between The Parties:* It is unclear from Mr. Flegle's letter which, if any, "arbitration events" or "previous actions by Nordell employees" necessitate this request. Nevertheless, Nordell has no objection to the suggestion that all correspondence between the parties occur through counsel subject, of course, to: (i) the timely delivery of the information ordered by the Panel to be provided to Nordell and (ii) the overriding right of the parties to communicate directly with respect to business transactions or settlement negotiations.

5. *Prospective Relief:* Triton's final request is speculative, unreasonable and assumes a determination by the Panel that Triton has not forfeited its interest in the project and that a "divorce" between the parties is inappropriate. Even were this to be the Panel's decision, Triton's request must be denied because it seeks an order obligating Nordell to pay, without recourse, any Triton cash call or JIB's, even if improperly or fraudulently issued. Even while the Panel is considering the current dispute, Triton is unilaterally seeking a determination, with a devasting

long term impact, on issues which have not been raised directly or indirectly by the parties in these proceedings. Such a request must be rejected out of hand by the Panel.

Should the Panel wish additional analysis, Nordell, of course, is available to address these matters, orally or in writing.

Very truly yours,

GORDON T. WALKER

GTW: lw25940
Enclosure
cc: Jim L. Flegle, Esq. (VIA FASCIMILE)

[ATTACHMENT A Omitted in Printing]

APPENDIX 6

American Arbitration Association
443 Shatto Place
Los Angeles, California 90020-1781
(213) 383-6516
Telecopier: (213) 386-2251

November 20, 1990

72 T199 0204 90
Nordell International Resources Ltd.
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and Triton Energy Corporation: Triton Oil (NZ) Limited

AAA Rules: Commercial

Danny Grunfeld, Attorney
for Nordell Intl. Resources Ltd.
McDermott Will & Emery
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Los Angeles, CA 90067

Triton Energy Corporation
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Michael R. Grzanka, Attorney
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660 So. Figueroa St., 24th Fl.
Los Angeles, CA 90017

Gordon T. Walker, Attorney
for Nordell Int'l Resources
McDermott Will & Emery
72 State Street, #1700
Boston, MA 02109

Dear Parties:

This will serve to confirm the the Panel's determination with regards to Respondent's request for additional monies.

The Panel has determined in favor of Respondent based on their request and additional information received today by way of a fax from Lana B. Latchford, Esq. A copy of said fax is enclosed to Attorneys Walker, Grzanka, and Grunfeld.

Receipt is acknowledged of Respondent's response to the Panel's request for additional information with regards to exhibits ZZZ and VVV.

Should Claimant wish to re[sp]ond to Respondent's letter, you are requested to do so immediately.

Thank you for your prompt attention to this matter.

Sincerely,

Becky Pelo
Tribunal Administrator

Encl. as noted

cc: George P. Armour, Esq.
Mr. Thomas D. Pyburn
Mr Marvin Grudem, CPA

APPENDIX 7

Bracewell & Patterson
4000 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201-3320
214-740-4000
FAX 214-740-4010
[Remaining Addresses Omitted from Printing]

July 29, 1991

Ms. Becky Pelo
Administrator
American Arbitration Association
443 Shatto Place
P.O. Box 57994
Los Angeles, California 90057

VIA FACSIMILE

Re: Case No. 72 T 199 0204 90; In the Matter of the Arbitration between Nordell International Resources Ltd., c/o Veronex Resources Ltd. and Triton Indonesia, Inc., Triton Energy Corporation, and Triton Oil (N.Z.) Limited

Dear Ms. Pelo:

I have received and reviewed Mr. Walker's corrspondence of July 22, 1991. Mr. Walker requests you to forward four additional pages of arguments to the Arbitration Panel at the request of his "client." Respondents oppose the submission of this additional argument and evidence and respectfully suggest that the letter not be forwarded to the Arbitration Panel.

However, if the Arbitration Panel decides to review Mr. Walker's letter, please also forward this letter to the Arbitration Panel so that Respondents' position will be explained in a contemporaneous fashion. Triton has the following procedural and substantive responses to Claimants' arguments:

First, the letter, and the arguments contained therein, are too late. The Arbitration Panel asked, on July 12, 1991, if the parties had anything further to add. Mr. Walker responded:

> *"Nothing further except to reiterate that there has been a number of misrepresentations on our position."*
>
> *Mr. Armour: "We got your point on that."*

The letter should not be forwarded to the Arbitration Panel.

Second, there has been no "admittedly fraudulent financial data" supplied, compiled or prepared by Respondents. Triton has never admitted having unclean hands, or anything of the sort. The rig issues and the issues involving Pertamina officials were fully and frankly discussed during the arbitration in Singapore. Triton offered to provide its own testimony on the purported issues if the Arbitration Panel felt it necessary.

Mr. Calloway testified that Exhibit VVV was prepared based on actual cash payments made. The issues of "inflated price" were not a part of his calculation -- which, in fact, supports the award issued by the Arbitration Panel on December 13, 1990.

Third, Exhibit VVV is based on the cash method. The background for this cash method came from a meeting between Mrs. Latchford and Messrs. Hite and Laferty in May 1990. A copy of pages 1754-1755 of the arbitration transcript is attached where Mrs. Latchford explained the conversation. There was no testimony contradicting Mrs. Latchford's statements.

When Exhibit VVV was originally offered, Mr. Grzanka had certain questions about how Exhibit VVV differed from

Exhibit 106 (attached to Trition's answer to Interrogatory 106 in July 1990). The discussion covers four pages of the arbitration transcript (pp. 1781-1784). At the conclusion of the discussion, the following occured;

> *Mr. Armour: Are you satisfied, Mr. Grzanka?*
>
> *Mr. Grzanka: Yes.*

Moreover, Exhibit VVV was the basis -- in material part -- for the calculations by Mr. Calloway contained in Exhibit ZZZ. When ZZZ was offered after Mr. Calloway's testimony, there was no objection. A copy of page 1825 of the arbitration transcript is attached showing the admission of the exhibit.

Fourth, Nordell continually misrepresents the status of the Gavan and Richport interests. Mr. Walker partially quotes Article 2.4(3) of the Farmout Agreement concerning Gavan. The part of that provision which Mr. Walker left out of his letter is as follows:

> *" and that NORDELL shall pay such amounts directly to GAVAN (and its successors and assigns) along with any other amounts, if any, due to GAVAN (and its successors and assigns). . ."*

Mr. Walker, again, ignores Section 10.6 of the Farmout Agreement, which Triton specifically referenced in the final argument on July 12, 1991 (final argument transcript page 119). In that section, Nordell agreed to pay *"any net revenue interest, net profits interest, overriding royalty interest or any other claim to ENIM Production due to GAVAN or RICHPORT (or the successors or assigns of either party) directly to the party at interest. . ."* Of course, there is further language in the Farmout Agreement concerning Richport's interest, which again fully supports Triton's position. At Section 2.5, Triton and Nordell/Veronex agreed to obtain an instrument executed by RICHPORT,

> *" which instrument shall provide: RICHPORT's release in favor of TRITON of any claim, lien or right that RICHPORT owns in the ENIM contract. . ."*

If Gavan or Richport have a problem with payment, they have a remedy: discuss it with Nordell. It is the obligation expressly undertaken by Nordell to compensate both of these entities.

Fifth, Veronex can be held liable for the payment of monies owed to Triton, as the Arbitration Panel ordered on December 13, 1991. Triton has submitted numerous legal theories and has explained the evidence leading to this conclusion. Surprisingly, the November 13, 1988 letter agreement where Veronex expressly ratified and reaffirmed the Farmout Agreement has been ignored by Nordell and Veronex. Again, that is not an insignificant letter. It was executed, with full advice of counsel, by Messrs. Hite and Laferty who expressly stated that they had the authority to execute on behalf of Nordell, Veronex, and themselves personally.

Sixth, the exhibits to the Nordell/Veronex brief constituted new evidence. Mr. Walker attempts to compare the recent Nordell/Veronex exhibits to Respondents' Exhibit ZZZ. There is a critical difference in these exhibits; Respondents' Exhibit ZZZ was admitted into evidence on October 10, 1990 prior to the close of evidence. Claimants' new-formed "comparisons" were not. To burden Triton with the obligation of guessing the source of the newly submitted exhibits, much less the methodology and content, is to go beyond the bounds of Judge Rafeedie's order and proper procedure.

Seventh, in its briefing and argument, Nordell requested that the Arbitration Panel at least allow it to keep its cost oil recovery even if it did default in its obligations. This matter was discussed in detail during the 1988 negotiations, and rejected. Mr. Dur testified that in the end, the parties agreed to an absolute standard for default. When default occurred, interest in the cost oil

was also forfeited. A copy of Mr. Dur's testimony at transcript pages 1506 and 1507 is attached.

Finally, Judge Rafeedie did not even suggest by the remotest of implications that the Court wished to see a complete recalculation of amounts owed or obligations assumed. The Court requested a clarification of these issues. Triton suggests that the Arbitration Panel should so clarify the specific issues remanded and complete this phase of the arbitration.

Very truly yours,

Bracewell & Patterson

Jim L. Flegle

JLF/lds
Attachments

cc: Mr. Gordon Walker
Mr. Michael R. Grzanka
McDermott, Will & Emery
2029 Century Park East, 38th Floor
Los Angeles, California 90067
(with attachments)

FLEGLE: Your Honour, we will offer 'ZZZ', 'A1' and 'A2'.

EXHIBIT 'ZZZ'

EXHIBIT 'A1'

EXHIBIT 'A2'

[ARBITRATOR] ARMOUR: So admitted.

* * *

[LANA LATCHFORD TESTIMONY, October 25, 1990, Questioning by Mr. Flegle]

Q: Let me move ahead in time - almost a year, over a year and a half, to May 1990, Ms Latchford. Did you have an occasion to just stay at a meeting with Mr Laferty and Mr Hite in May of this year?

A: Yes I did. That meeting was May 25, 1990 at Triton Energy Corporation's offices in Dallas, Texas.

Q: What was your understanding of the purpose of the meeting in Dallas?

A: My understanding was that Nordell was interested in making some sort of proprosal to Triton Energy Corporation to buy out Triton Indonesia Inc's 60 per cent interest in the Enim project.

Q: I wanted to ask you about a particular conversation within the meeting. By the way, how long did the meeting last?

A: Probably 45 minutes, an hour or so.

Q: Who else was there?

A: Mr Lee, who is chairman of the Board of Triton Energy Corporation, Mr Gore, who is president of Triton Energy Corporation, Mr Kroll, who is general counsel of Triton Energy Corporation, Mr Tatum, who is senior vice-president

of operations, Mr Ciavarra, I think he's vice-president of engineering for Triton Energy Corporation, myself, and of course Mr Laferty and Mr Hite.

Q: Was there a discussion at that meeting about what position Nordell and Veronex took about the cash, the "cash" method of accounting as it related to the farm out agreement we're discussing in this case?

A: Yes there was. I asked -

Q: Okay go ahead. Can you please discuss that.

A: I asked Mr Hite and Mr Laferty directly what they meant by the term "cash accounting" in all of the correspondence that I was reviewing. I asked them if what they meant by cash accounting was cash for expenditures and cash for revenues too. They said yes. I asked them that same question I know twice. Probably three or four times but I know twice and both times they responded that cash accounting was for expenditures and revenue.

Q: You say you asked several times?

A: Yes.

Q: After you received that information from Mr Laferty and Mr Hite about cash accounting, did you give any instructions to Mr Callaway?

A: Yes I did.

Q: And what instructions did you give Mr Callaway?

A: I asked him, in preparation of the response to Interrogatory No. 106 of Nordell's to Triton, to treat cash receipts or remittances from Pertamina as a cash entry on 106, not to treat it as accrual.

* * *

APPENDIX 8

[CALLOWAY TESTIMONY, October 25, 1990, Questioning by Mr. Flegle]

Q: Now, let me ask you this, Mr Callaway. When you were in Jakarta in February 1990 did you fool around with the records?

A: I'm not sure I know how to answer that. I worked with a lot of records with the intent of straightening things out, not with the intent of anything else.

Q: Did you have anybody working with you or did you see anybody that had the intent of fooling around with the records?

A: Absolutely not.

Q: At any ways, can you determine any motives for Triton to act this way, evaluate whether the internal auditors did alter or modify the books and records of the project. Did you or anyone working with you alter or modify the books and records of the project?

A: We did not.

Q: Mr Callaway, I am going to be asking you about exhibit 106 or what was 106 in just a minute and asking you about your conclusions on some assumptions concerning the termination of the carry. Before I get there, have your conclusions, your assumptions and your resolves on the carry been placed on the Triton Indonesia books?

A: To my knowledge they have not been.

Q: Do you know the reason for that?

A: It's been sort of a moving target. We didn't want to change it every time we came up with a new interpretation of a different clause. We'd like to arrive at what we consider is the final solution to this problem and then make the corrections to agree with that.

Q: Now, when you were there in February, Mr Callaway, was there any effort on your part or anyone that was working with you to your knowledge to put information in a format that would hide certain things from Mr Maupin or anybody sent over from Nordell?

A: No, sir.

Q: What was your purpose in February?

A: As soon as we realized that we had a problem with - or a possible problem with termination of the carry, our main focus became to calculate my opinion of when the carry ceased.

Q: Is that what you set out to do?

A: That's correct.

* * *

Q: Now let me digress just one second, Mr Callaway. How did you go about collecting all this information?

A: *Most of this was done in Jakarta in June of this year. I went each of intercompany billings and supporting documentation to those billings and put it all into my computer, including a paid date. I sorted that information on date paid and started [summarizing] it on a cash basis to make sure that it was consistent with the terms of the agreement. Then put a certain code in here which utilised formulas to split these amounts up into various categories such as capital assets.*

Q: Mr Callaway, were you the man in charge of this project?

A: Which project?

Q: The calculation of this? *The schedule that you were just describing, were you the person in charge of getting that schedule?*

A: *I was in charge of it and I was the one who did it, yes.*

Q: *So to the best of your ability, the numbers there accurately reflect what you found?*

A: *In the time frame, yes. I may have some problems in here, I don't know, I was not doing a complete audit of everything in here.*

Q: I understand that and I understand the precision with which accountants use some of that language of. *Do you know of anything that exists right now that would change the numbers on 'XXX'?*

A: *Without doing an audit, no.*

* * *

[Questioning by Arbitrator Armour]

Q: And so you're offerring at this time? *'ZZZ' a thing called JIB, 11/89 and page is somewhat...called revenue and cash basis.*

A: *It's correct.*

Q: *Do there pages reflect your work, Mr Callaway?*

A: *They do.*

Q: *You are responsible for it?*

A: *I'm responsible for it.*

* * *

[CONTINUED CALLOWAY TESTIMONY, Questioning by Mr. Flegle]

Q: *So do you know anything about the condition of the office when Triton took over in '88?*

A: *Only the horror stories that I have heard about it.*

Q: *How long did it take you to clean up?*

A: *Quite a few months I am not sure.*

Q: *Are you saying that still has not been cleaned up?*

A: *I say still not. We still have for instance accounts payable that we have a problem with it totalling over $400,000 dating to October 1, 1988. A couple of hundred probably Maybe not that many but it is quite a few.*

Q: *Not just two or three?*

A: *No sir.*

* * *

[Emphasis Supplied]

APPENDIX 9

[JIM McDONOUGH TESTIMONY, October 23, 1990, Questioning by Mr Flegle]

Q: Do you know how this was done here with regards to the rig?

A: We purchased the rig.

Q: 'You' being?

A: Triton

Q: Triton Energy?

A: Energy.

Q: Purchased the rig, directly from Cartwell?

A: No. It had to some way go through Budi Harta Saki, for Cartwell wouldn't do business with Budi Harta Saki because Budi Harta Saki still owed him $50,000.

Q: So Cartwell insisted that the deal been done through Triton Energy?

A: Right.

Q: Do you have any information exactly how the deal of the rig was done other than you jacking up this purchase order and sending it to Mr McAdoo. Do you know how it was actually done?

A: I don't understand what you mean, 'actually', you mean the purchasing process?

Q: Yes

A: Okay. The Indonesia office place the order with Budi Harta Sakti. Budi Harta Sakti let us know about it. We bought the

material and pay for it. We charged Indonesia for it. I believe this is the process. Somehow Budi Harta Sakti got it's commission all out.

Q: You know how?

A: No I don't know how the B T companies offer. They just give you a bill and you paid it.

Q: How much is charged to Triton Energy to Triton Indonesia for this?

A: Exactly what was paid for.

Q: Are you saying then the original price that Triton Energy purchased was it for in fact Triton Indonesia purchased it for plus Budi Harta Sakti percentage?

A: Yes sir.

Q: Any one else?

A: Richard McAdoo.

Q: Any one else?

A: There must have been but I don't recall.

Q: You talked with Mr Callaway about it didn't you?

A: No, I don't believe so. I may have.

Q: Talk to Cheatham about it?

A: Probably did. I don't recall.

Q: How about Mr Tatum?

A: No.

Q: Besides Mr Flegle and Miss Latchford have you talked to any one about this rig transaction in the last month?

A: Since I have been here, no.

Q: Have you been here for long?

A: Three weeks.

Q: About a month?

A: No, I did not speak to anyone about it prior to this.

Q: Are you satisfied with the quality of the rigs and equipment purchased?

A: Best money can buy.

Q: Price was a good price?

A: Excellent.

Q: Did you negotiate the purchase of the purchased price for all the equipments we are talking about?

A: Yes sir.

* * *

[Questioning by Mr. Grzanka, counsel for Nordell]

Q: You don't know whether Mr McAdoo ever used that [a rig purchase order] or not?

A: I do not.

* * *

Q: Do you know how much the joint account was charged for these rigs?

A: No, I have no idea.

APPENDIX 10

[RICHARD McADOO TESTIMONY, October 24, 1990, Questioning by Mr. Armour]

Q: Mr McAdoo, you realize you are still under oath?

A: Yes.

Q: Mr McAdoo, we are ordering any of the witnesses, anyone who has heard any of these hearings up till now, not to disclose anything they have heard or read in this proceeding?

A: Okay.

Q: Do you understand that?

A: I understand that.

Q: Or discuss it with anyone?

A: All right.

[Questioning by Mr. Flegle]

Q: Mr McAdoo, we have discussed a portion of what I would call a highly confidential section of this record, of a document called the Callaway report and it was written on September 25, 1989. When did you first see a copy of that, sir?

A: Some time in mid November 1989.

Q: Can you tell me how you saw a copy?

A: I first saw a copy when Mr Phil Keever brought it into my office and said that he had a copy of a report that Mike Callaway, the director of audit, had written in a visit to Indonesia two or three months previously and he said he had been given the report by Joe Sieviera with instructions not to show it to me and that he felt it was a very serious memo. He was

concerned and worried about the content of it and he wanted to show it to me and he warned me that I would not like it but he felt duty bound to show it to me.

Q: You are the general manager of the Triton Indonesia office?

A: That's correct.

Q: You were in Mr Keever's office?

A: That's correct.

Q: Did you make a copy of that report (inaudible)?

A: I still have a copy Mr Keever gave me.

Q: You didn't give it back to Mr Keever?

A: No, I did not.

Q: Did you give a copy back to Mr Keever?

A: No, I did not give anything back to Mr Keever.

Q: Do you know if (inaudible) Mr Keever ...?

A: No, I do not.

Q: Where did you put your copy of the Callaway report?

A: I took it home and kept it locked up in a briefcase in my house. I was very concerned that it would get out into the Indonesian employees or perhaps the Indonesian authorities such as Pertomina.

Q: How many other Triton Indonesia documents do you keep at your house?

A: I kept a copy of the farm out agreement at my house and also the deed of assignment from Triton Indonesia to Triton New Zealand.

Q: Did you keep any of the daily records or any of the financial statements or any of the operating (inaudible)?

A: No, I did not.

Q: What documents of Triton Indonesia did you take with you when you (inaudible)?

A: As best I can recall, the Callaway report. That's the only one.

Q: Why did you take that report with you, Mr McAdoo?

A: I was very concerned that I was being set up as a scapegoat for the lack of performance of the operation and I felt that memo afforded me some sense of protection.

Q: Kind of some leverage to be used against Triton?

A: Not leverage to be used against Triton; leverage to protect myself.

Q: From what?

A: From the accusations and the allegations that Mr Callaway had made in that memo. I worked for several years in Indonesia and I value my experience and position with the Indonesian government, particularly Pertomina, very highly and some of the things that Mr Callaway very unprofessionally, in my opinion, set forth in that memo and then allowed to circulate back to the field office in Indonesia certainly put my relationship with Pertomina at great risk and jeopardy and put Triton's position there at even greater risk.

Q: But even at the expense of risking Triton, you kept a copy?

A: Yes, I did.

Q: Who have you shown the copy to that you kept?

A: I've only shown it to Roland Siouffi. I showed it to Roland Siouffi the day after it was presented to me. Mr Siouffi is management advisor who has 6 contracts with Triton and it was his designated responsibility to advise me as management on affairs with Pertomina, with the government of Indonesia. I

was extremely troubled by some of the things Mr Callaway alleged in this memo and I needed his advice. His advice to me was that memo should disappear completely and whatever I did not to let a copy get out.

Q: You didn't take his advice, did you?

A: Not unless this proceedings started and it became clear that Triton was going to use me as an excuse for a lot of the things that Triton has gotten itself into.

Q: Well, (inaudible) into that, Mr McAdoo. You didn't take Mr Siouffi's advice and make the document disappear completely?

A: He didn't tell me to make it disappear completely. He thought it would be good protection for me in the future.

Q: Mr Siouffi suggested that you keep it to protect yourself?

A: I think I suggested it to Mr Keever - Mr Siouffi, and he understood my feelings.

Q: So you showed it to Mr Siouffi and then suggested to Mr Siouffi that you keep the report to protect yourself later. Is that what I hear you saying?

A: Yes.

Q: In November 1989?

A: That is correct.

* * *

Q: Now, once you assumed your general manager responsibilities at Triton Indonesia in November 1988, there came a time when Triton Indonesia needed to purchase some rigs for the Enim project. Is that right?

A: Yes, that's true.

Q: Isn't it fair to say the purchase of the rigs was done under your instruction and direction?

A: The Indonesian side of the purchase process was carried out under my direction, yes.

Q: Let me show you a document I've marked as TTT, which is a memo dated June 12, 1989. See if you can identify that as a memo that you prepared and sent to Triton Dallas concerning the rig purchase?

A: Yes.

Q: Is that your signature on the third page?

A: It is.

Q: When you say that you handled the Indonesian side, my reading of this memo looks like you not only handled the Indonesian side but you also gave instructions on how it was to be handled on the Dallas side. Did you give instructions on how it was to be handled on the Dallas side?

A: No, I gave - I discussed the rig purchase deal with Joe Sieviera [sic] at some length and he - we tried to work out a mechanism to handle it on the Dallas side.

Q: And the reason that you had to have a mechanism to handle it was what?

A: Well, Triton Dallas had no system of purchase orders. They were not equipped to handle the purchase of oil field equipment and what we needed was for Jim McDonough, who was very helpful in the whole process, to go around and purchase in the United States at rig auctions or wherever he could get them, the necessary components and accessories (inaudible) ready to roll drilling workover units.

Q: Do you dispute the comment that through Mr McDonough's work approximately $750,000 was saved on the value of the equipment purchase?

A: Yes, I would dispute that fact. I think it was considerably more was saved.

Q: You think savings to the project through McDonough's work were even higher than $750,000?

A: I would say they were at least $3 million.

Q: And I take it there would be no dispute that at the time the $3 million was saved for the project Triton was still in the carry period, right?

A: I suppose it was, yes.

Q: Meaning prior to November 1989?

A: The rig purchase was a very long and involved thing. It took - the rig purchase was actually begun in February of 1989 and it was not yet complete when I left Triton in December. And, you know, the purchase orders and invoices and everything, they were staggered payment terms. It would be so much on purchase order, another amount on the rigs leaving the yard, fabrication facility, and the balance when they arrived in the field. So certainly some of the costs were incurred during the period in which there was a carry. Some of the costs were past that position. Regardless of whose calculation you might want to use.

Q: While you were general manager of Triton Indonesia was there any conscious decision by you to use the rig purchase as an effort to double bill the net project investment or the carry account?

A: No, there was never any intention to do that at all.

Q: When you say on page 2 of 3, item 8, "I realize you guys may find these elaborate maneuvers to accomplish a simple objective. I won't argue that point at all. Suffice it to say they are necessary and they will work", what did you mean?

A: Well, I mean that this is an unusual method of buying equipment and bringing it into Indonesia because of the timing and because of certain elements involved. At this point in time of this memo I think we had the hardest part behind us.

Q: I take it your position is that this rig purchase procedure was legal and in accordance with your understanding of the Indonesian policies?

A: It was by the book, referenced, as a Pertamina re purchase approval letter which you must have prior written Pertamina approval, prior to issuing the purchase order. That was achieved. I personally took two senior Pertamina representatives on a trip to Elderado Kansas to view the rigs which is another part of the Pertamina procurement regulations for drilling and work over rigs, a Pertamina representative must view and inspect the rigs and sign all of them before they are shipped.

Q: So I take it you vigorously disagree with Mr Maupin's conclusion about this rig transaction, don't you? His conclusions that these things could jeopardise the project and in violation of Indonesian law?

MR ARMOUR: He was not here when Mr Maupin testified.

Q: You know that Mr Maupin has said that he has talked with you about the rig transactions?

A: No, I wasn't aware of that.

Q: Has he talked with you about them?

A: Yes he has.

Q: And you and he disagreed on whether they are in accordance with the law - with the book don't you?

A: We certainly do.

Q: In fact, is it fair to say that you vigorously disagreed with Mr Maupin's conclusion?

A: Well Mr Maupin is not an expert on Indonesian procurement regulations and what Mr Maupin's main objection is, the fact that Triton Dallas billed down in intercompany billings, some of the rig equipment costs which was specifically not to be done, because Triton Energy Corp cannot sell the rigs to Triton Indonesia those cost need to come into Triton Indonesia through a P T P T company. Mr Maupin saw intercompany billings coming into Triton Indonesia, which to the best of my knowledge were reversed. Mr Keever and I made a conscientious effort to review those billings to reverse those charges. And I think what Mr Maupin is referring is that.

Q: He wrote on p. 14, "It is the opinion of the auditors that the operator -" and I take it the operator, and I take it the operator was Triton Indonesia, was it not?

A: At that time, it was.

Q: "It is the opinion of the auditor that the operator knowingly handled the rig purchase in a manner that was inconsistent with good business purchasing practice of Indonesian regulations". You disagree with that, don't you?

A: I do disagree with that and I disagreed with Mr Maupin also. It was handled according to Pertamina procedures and guidelines. The test of that remains to be seen, but will be seen at the next audit and I'm confident that that equipment will pass Pertamina audit with flying colours.

Your Honour, we would offer Exhibit 'TTT'.

* * *

Q: Just this question, Mr McIndoo [sic]. There's no question in your mind that you were General Manager of Triton Indonesia office until at least December 9, 1989, is that right?

A: Can you say that again.

Q: You were General Manager of Triton, Jakarta?

A: I was Vice President/General Manager that's what my appointment letter says.

Q: And there is nobody in Indonesia you reported to?

A: Nobody, yes.

Q: So when you tell us that you didn't see all the documents about the rig deal, it wasn't because you didn't have the authority to see them if you wanted to look at them. Is that right?

A: I presume that there were many documents about the rig deal involving Mr McDonough's trips and purchases I was only interested in summaries of those things.

Q: And you do not say that you were asleep with the watch or something and the stuff was slipped in under your nose in ~~Jakarta~~, are you?

A: No it would have been almost impossible to slip it under my nose or the Indonesian's custom nose.

* * *

APPENDIX 11

[RICK POULTON TESTIMONY, October 16, 1990, Questioning by Mr. Flegle]

Q: *Sir, if I ask you if you knew how what you have testified to today applies to the carry calculations, you can't give us number impact, can you?*

A: *No sir.*

Q: *And if we ask you today what you testified to impacts net project investment calculations, you have no idea how...?*

A: *Conceptually I do understand it.*

Q: *I understand the conception.*

A: *You mean the actual calculations, the actual figures?*

Q: *Yes.*

A: *No.*

Q: *And if I ask you what the actual figures were in the cost pool and how your testimony today applies to those actual figures, you don't have any idea of that either?*

A: *Not really, no.*

* * *

Q: *You are saying that the payments were made for materials that were never received?*

A: *No, I'm saying that I could not confirm receipt. I don't know whether the materials were received or not.* I felt that it was inappropriate to make the entries until it could be confirmed whether or not the materials had been. I felt it was inappropriate to take it out of in transit until there was a document, you

know, that demonstrate the materials had been in fact received.

Q: So, it could be that all this build-up in the in transit account was legitimate materials that were received?

A: That is possible. I am saying that I had, you know, at least identified excess of $300,000 of rig and rig equipment charges, that were included in the transit account, where I had made a diligent search for receiving documents and had not been able to locate that I had attempted.

* * *

Q: Alright, well let me, not that I agree with you Mr Poulton, but let me just take your line. The subsequent assignment of this in transit account - are you with me so far?

A: Yes.

Q: Was incomplete at the time you resigned. Was it not?

A: It was incomplete.

Q: And as a matter or [sic] fact do you know that Triton hired KPMG to complete it?

A: As a matter of fact, I met with KPMG the day after I resigned to brief him on what had been done. I specifically came to meet with KPMG to transfer my responsibilities or what I had been working on and to fully inform them as to what I had been done and to make myself available for them to proceed with whatever accounting they thought appropriate.

Q: And did you know that KPMG completed it it about 60 days?

A: I don't know.

* * *

Q: And my question to you originally was what personal knowledge you have about that about Foreign Corrupt Practices Act or about - ?

A: By Triton?

Q: Yes sir.

A: What was stated at that meeting?

Q: Did you see a payment made?

A: I did not.

Q: Do you have any personal knowledge of any payments?

A: I do not.

PROCEEDINGS OFF THE RECORD

PROCEEDINGS RESUMED.

Q: My question to you, Mr Poulton, is- other than this conversation you had with Mr McClure, when you say Mr McClure said something to you?

A: To March 9th?

Q: Yes sir. Conversation. Have you seen any records?

A: No.

Q: That show payments? Did you check?

A: No.

* * *

Q: Okay, alright. Now I also heard you say today that there were, I believe I heard that you were concerned that documents were being fabricated. Do you remember using those words?

A: I was concerned over a scheme to fabricate documents, yes.

Q: Do you know if any documents were actually fabricated, in your ...?

A: To my knowledge when Barry Jones refused to go along with that procedure that that was abandoned.

* * *

[NORDELL SUBMISSIONS]

MR GRZANKA: For the record, let me tell you what this packet is. The first page is the Californian Civil Code definition of deceit, s.17 and of course in California, deceit and fraud are synonymous charges. The second page is, I think, from Whitfield & Hunter to prove that.... It cites Syme v. Malouff, a joint venture case which is the third component of this packet. We give you the entire case of Syme v. Malouff....and concealed one by the other. The last is what I call a pot pourri - three pages that deals with proving intent to deceive from circumstancial evidence as opposed to....evidence.

[Emphasis Supplied]

APPENDIX 12

[GRAHAM HOLDOWAY TESTIMONY, October 19, 1990, Questioning by Mr. Flegle]

MR ARMOUR: Mr Holdoway, what's your full name and address, please?

A: Graham Ian Holdoway. ....Barat 21 II Jakarta, Indonesia.

Q: Mr Holdoway, how are you currently employed?

A: I'm currently employed as a technical adviser by the KPMG firm in Indonesia.

Q: How long have you been employed by KPMG?

A: Since June 1984.

Q: How long have you been a partner?

A: Since July 1988.

Q: What is your educational background?

A: I've an undergraduate degree in Administration from Victoria University of Wellington in New Zealand. I've a postgraduate diploma in Accounting from the same university. I'm a Member of the Society of Accountants in Australia and also a Member of the Institute of Chartered Accountants in Australia.

Q: By the way, where were you born?

A: New Zealand.

Q: And where do you consider your home now?

A: Melbourne, I guess.

Q: How long have you been in Jakarta?

A: I've been in Jakarta on a permanent basis since April this year. I've previously done two short term assignments for three weeks at a time in 1985 and 1986.

* * *

Q: I want to get to the business at hand, Mr Holdoway. In terms of the work that has been performed by KPMG for Triton Indonesia, can you briefly describe for the members of the panel the participation of Mr Barry Jones, who is in the room with us, who is acting as a technical adviser, your participation as technical adviser and the participation of Mr Nugroho, back in Indonesia, and who is a partner in Indonesia?

A: The firm had had some involvement with Triton since they took over the operatorship providing limited tax advice. We received a call from Bill McClure in April this year and I went to see Bill on 1 May. Bill described to me a problem that he was having in reconciling his inventory in transit account and asked if we were able to help them with that task. Bill said to me that he'd recently arrived, I think, in February and that he had a whole range of areas that were not under acceptable control and the way he decribed it was he was splitting off one area and saying 'well, if I've got KPMG involved in that, I don't have to worry about that. I can go on to the other areas.' We got a senior manager out of Melbourne, who came up, a guy called George Pappas, who came up and led that work, working with a number of accountants from our audit division. He worked on that for a period of, I think, around six weeks. As that work was winding down, Bill asked George if he could go on to look at another area that Bill was unhappy about performance. And that was the area of cash calls, joint interest billings, specifically to work out what had happened and also, if you like, to fight the fire and try to put it out by putting together in proceduares and that work was done in early June. Attached to that work was a listing of cash calls and JIBs made and - sorry before we go on to that - at the end of May, for the

first time we were asked to do what we call "agreed upon procedures" for the audit of Triton Indonesia Inc., which was being done by our Dallas office. And Nugroho had a direct involvement as the audit partner in that. And then following on from that, we were asked to update and extend our work on the cash calls and joint interest billings to provide information for this hearing. That is contained in the letter of 11 October. Barry Jones was the person who was responsible for going back and re-working the schedules and presenting it in this form. The work that we'd done previously had been procedurally an administratively directed, I guess. This was for a specific purpose. So it was different and a higher standard of care with how it was exactly done was applied to us.

* * *

Q: *Now, at any time during the work on behalf of Triton did anyone tell you that the term "glossing" or anything like that was what you were supposed to be doing?*

A: *No.*

Q: *Was any effort made - will you tell us - one way or the other to overcharge Nordell's account, undercharge Triton's account, do anything other than what was the appropriate way under the circumstances?*

A: *None of our work was directed towards that end but equally I never saw or heard of any such instances.*

* * *

Q: At the end of 6 weeks on this project how did KPMG feel about the work that it had done and what it was handing over to Triton Indonesia?

A: If I could answer that slightly obliquely. I - George Papas, the consultant who did it, has worked for me for two years and I thought it was the best piece of work that George had done for

me to that time. It was taking a situation where there were 5 pieces of information you need and you maybe had 3 and providing the work has been carried forward in the way that George set out, you'd have - and also the other things that affect it because obviously if you've got poor controls over your general ledger things can go amiss in different areas. But there was no reason why they wouldn't be 6 to 12 months away from having a fully functioning inventory system.

* * *

Q: Let me turn your attention, Mr Holdoway, to October 11, 1990 report which was previously marked as claimants exhibit 54. Now, let me ask you this. Claimants exhibit 54 is a document that has Mr Nugroho's signature on it as partner. Is this document the report that KPMG prepared for Triton on the position - cash position of non-operating partners?

A: Yes, it is.

Q: Now, in terms of this report, can you point the members of the panel and myself to the part of the report that indicates the balances either owed by or due to the non-operator partners as of the terminating date of the report?

A: Well, appendices 3 and 4 are the most comprehensive statements.

Q: *Appendix 3 has the caption 'Enim contract area, Indonesia. Partner compliance with cash obligations to September 1990. Partner Nordell'?*

A: *Yes.*

Q: *In terms of that appendix, can you tell the members of the panel the conclusions of KPMG on what Nordell owed or was due as of September of 1990?*

A: *It is the figure in the final column, the bottom right-hand corner, 663402.*

Q: *And that 663402 indicates what?*

A: *The funding with the - the funding to the project was short by that amount.*

Q: *So is that amount due to or owed by Nordell?*

A: *Owed by.*

Q: *And by the way, can you tell from this chart and the information the KPMG reviewed what month was the first month in which there was an owed by amount in the Nordell column?*

A: *May 1990.*

Q: *And the owed by amount for that month was what?*

A: *$US457,284.*

Q: *Appendix 4 is captioned 'Enim contract area Indonesia. Partner compliance with cash obligations to September 1990. Partner Triton Oil New Zealand'. Can you tell from that chart what the balance for Triton Oil New Zealand is as of September 1990?*

A: *Yes, the bottom right-hand corner again.*

Q: *And the number is what?*

A: *235853.*

Q: *Is that owed to or owed from?*

A: *That's owed to.*

* * *

Q: *As you were going through this project leading up to June 18 1990 report, in any of the reports that you got from your own internal people, were there any conversations of them telling you or you telling them, 'Hey, this looks like fraud. It looks like lying, cheating, stealing from Nordell'?*

A: *No, no.*

Q: *Or padding the project so that Triton didn't have to put in any money or overcharging Nordell?*

A: *No.*

* * *

[Emphasis Supplied]

APPENDIX 13

[PHIL KEEVER TESTIMONY, October 26, 1990, Questioning by Mr. Flegle]

Q: The first set of question I have is about the interim period and the days before in you due diligence efforts and something that I almost got into before you told us all -. What part of the due deligence did you play?

A: I was involved mainly with the inventory and fixed assets.

Q: And what did you do?

A: First thing which I do was to establish on the books what the balances were for both of those accounts and we were able to come up with a - I guess a number that we thought was approximate for both of those categories and we were given a listing of warehouse inventory by - that had been prepared by Nordell. I think perhaps Mr Hariendja and perhaps another member of the procurement staff there had prepared the document which was a physical inventory of the field operation, ... and the outlying ...and any place where there were inventory items stored. There was never, to my knowledge, a detailed listing of fixed assets provided because, according to Nordell and according to our own experience since we have been with this project. There is no such thing as a detailed fixed asset listing and this has been a problem with the Pertamina auditors. But what I did this specifically with the inventory that I was given by Nordell was I took that to the field and I was there for, at least to the best of my recollection, about 4/5 days and I took the listing that had been given to me and I took every significant item on that listing above -. I think I had a cut off of something like $20,000/$25,000 and I tried to

identify the significant items, the inventory items. Going through that listing on an item by item basis, the results were not too bad. I would estimate on the significant items, probably 75/80 per cent of the things I was able to look at. And so I checked off those items verifying the physical existence of those items and brought that listing back to Jakarta. The problem was using the values that were on that inventory listing, and comparing that with the values on the books, there were something like a medium four, medium five I don't remember the number precisely, difference between the values - the inventory that was listed on the detailed listing and what was on the books. So we said well we have got an inventory fixed assets shortage of approximately 1.4 million. And I think Mr Gros Dubois mentioned that in his testimony yesterday, as having been used in the negotiations to just the early balance, arriving at 21.2 million. So over time, from that point forward, we were trying to - and after I came here on a permanent basis, and even well into 1990, we were trying to get the books corrected for fixed assets and inventory. And that was finally completed in the KPMG work on the inventory side, of it in 1990.

Q: *Was this a subject that Mr Poulton was given to fix?*

A: *Yes, sir.*

Q: *Can you fix it?*

A: *Mr Poulton did not fix it. No. He worked on it for a period of approximately 15/16 months and it was a very difficult project. And a very different project, to get a handle on and often we had to have some KPMG staff people to come in to complete the project.*

Q: *And the KPMG staff did they complete it?*

A: *Yes sir, they completed it in within about 5/6 weeks.*

Q: About what time of 1990 did they start? Do you remember?

A: The best I recollect, the latter part of April and first part of May.

Q: While I am on the subject and I know we are shooting out of the interim period just a second, but I am going to take you forward a few months in Mr Poulton's department. I would say he was a little bit upset the other day he was testifying. One of the things he says was upset about is Claimant's '52' which was a letter to him on May 8, 1990. Does that have your signature on it.?

A: Yes, it does.

Q: This is the letter that said, 'Rick, you've not recognized and conformed in the agreement we made. Unless I see you in my office before Friday 11, May 1990, I be forced to cancel the following documents and you will be on the black list with the Indonesian government! Why did you write that letter?

A: I didn't write that letter. I signed that letter. The letter is - beginning I will be forced to cancel the following documents and you will be on the blacklist of the Indonesian Government,' that is a direct quote of the administrative manager for P.T. Budi Saski who had the consulting contract and the work permit and paid the taxes, the Indonesian taxes for Mr Poulton. Mr Poulton had not come back to the office to do his final closing out work to get his final visa to leave the country. To get his final passport documented for that purpose and the cancellation of his work permit, and P.T. Budi was calling us on a daily basis, 'where is Mr Poulton? We had to have these documents to get him out of the country in the time specified. We could not contact Rick and the times we did contact him I think it was through Bill McClure. He and Bill had some - there isn't the kinds of words to say about each

other. Along the way and it got off into a kind of an unfavorable and unhappy circumstance, but the reason we did this letter was because we were getting heavy pressure from P.T. Budi to get this done and so I had Titi, who is our Indonesian Administrative Manager, dictate from P.T. Budi's administrative manager word for word what should be said to Mr Poulton and this is what she wrote and handed to me and said, 'These were his exact words and he wrote to put on the Indonesian black list the unless he compiles,' and I said 'Well Mr Poulton should have that message,' and I signed it and sent out it gun.

Q: *Mr Poulton testified that he took a hard disk worth of materials with him that he back to the States to solve the Enim problem. Did he tell you that when he left?*

A: *He sure didn't.*

Q: *Did you authorize him to take a hard disks away for information?*

A: *No sir.*

Q: *When did you learn about him taking that information?*

A: *in the testimony here. I heard some people mention that, and thought perhaps he had. I did not know until he said so himself.*

* * *

Q: I want to pass from the due diligence time, Mr Keever, to the period of time that you came back after the audit was complete. Can you put a day on that for the panel, one more time?

A: I left Jakarta towards the end of September about 25/26 September and I went back to Dallas for the entire month of October, while negotiations continued and I return to Jakarta, November 21, 1988.

Q: And you went there with the exception of leave of the United States Senate can you describe basically of the office when you saw it on November 21, 1988?

A: Well the office is vastly different right now, physically. We have re-done the right side of the office and made some other additional office and whatever and have changed the physical environment quite a lot. I guess my comments all related to the accounting area is.-

Q: What I want, is to explain to the panel what the condition of the files were. *What was happening to those kinds of things, accounts payable, vendors?*

A: *When I returned to Jakarta on November 21 1988 Mr Pat Murphy was there.* He arrived the middle of October. Mr Henry Hills, who Mr Mcadoo had brought in as an Indonesian consultants was there and the two of them were involved in the analysis of invoices for payment to creditors. *The entire left side of the building, from the front of the building to the back of the building there a long hallway, was filled with stacks of invoices and they were just rolled up neatly along the wall by - in alphabetical order and they literally reached from the front of the building to the back of the building, which was probably a distance of 200 feet in my estimation.* And the stacks were from this side to some this side on...of the contractors. And what Mr Hills had done was, he said, 'I got to find these invoices first before I can determine how much we owe these people.' *And he had physically scoured the office and he had found invoices in the desks of many, many people, over in the accounting people and the operations people desks, through out the building according to them.* I was not there when they initially started the stacks but they indicated to me that *they had physically found invoices tucked in every drawers that they could open and in many, many respects.* So what they had done is to accumulate all of this paper, put in stacks, in alphabetical stacks, and they started at the front of

the room and worked that stack off. And working that stack of invoices from the time I arrived there until that hallway was clean, was probably a period of 90 days, on into February next year.

* * *

Q: *By the way Mr Keever let me go forward for just a second with Mr Callaway's visit. Did you put any limitations or restrictions on what Mr Callaway did?*

A: *No sir. I was glad that Mr Callaway was there.*

Q: *Did you put any restrictions on what he could look at in terms of rigs, rig issue for example?*

A: *No sir.*

Q: *Did you put any restrictions on him what conclusions he should make?*

A: *No sir.*

* * *

Q: Mr Keever so we have a Pertomina audit on going on March 1989, Mr Poulton coming in for inventory in transit?

A: Right.

Q: Was the project also involved in the process of sharing rigs for the project ?

A: Yes indeed.

Q: That is the question I referred to the testimony to Mr Callaway about Mr McDonough about?

A: Yes.

Q: About two three months later there was a *tax audit?*

A: *This was an audit that was conducted in Vancouver in June of 1989, BP/KP and Pertomina auditors went on that trip*

Mr Hariendja our Indonesia Finance Manager went and I also accompanied them to Vancouver. We were in Vancouver about two weeks and then on completion of that audit which resulted in the tax settlement of $150,000 that we have already discussed here on couple of occasions they weren't discussed that further. After that we took that same group from Vancouver to Dallas just for an opportunity to meet the people in Dallas and to see the Dallas Headquarters they never been there before. So we were in Vancouver two weeks and Dallas one week and then returned to Jakarta.

Q: *Were the taxes that resulted from Vancouver tax audit result activity by Triton Indonesia?*

A: *No sir. Those were as result by activity by Nordell.*

Q: I take it that the result of the tax audit has been concluded?

A: The results of the audit was complete and there was an audit report that was issued shortly after our return to Jakarta.

* * *

[Questioning by Mr. Walker]

Q: Let me ask you Mr Keever, while on the subject of audit, I ... KPMG for just a second. By the way have you looked at KPMG's report, *claimant's '54'*?Is that the October report?

A: Yes sir.Yes sir, I have.

Q: And you agree to the numbers in the report??

A: I think the numbers as stated are correct.

[Continued Questioning by Mr. Flegle]

Q: Alright. Let me ask you this last question and I move off the issue of auditing. As I ask about Mr Maupin?

A: Yes sir.

Q: He has given us a testimony about the audit work or the accounting work that he performed in *April 1990.*

A: Yes.

Q: *Did you meet Mr Maupin when he arrived in Jakarta?*

A: *Yes I did.*

Q: *Can you tell the panel about what you recall about the first meeting with Mr Maupin?*

A: *Mr Maupin* came to the office with his associate, Mr Jerry Robertson, and Bill. They came to Bill McClure's office. He brought them in to see me and we sat and talked for a period of at least 30 minutes I would say and *I told Mr Maupin that it was fine that he was there and we would try to provide him with any information he needed. And I also told him that if he didn't get what he wanted, that he knew where I was and to please see me and let me know if there was any problem with the audit.* In Jakarta, my office sits right at the corner and I can see the entrance and exit and I see any one that comes and goes throughout the day just out the corner of my eye and each day I saw Mr Maupin and Mr Robertson coming in and each day I saw Mr Robertson and Mr Maupin go out and at no time during the three week period that they were there, did they ever stop and say anything other than good morning when they came in and when they went out at night, they waved to say good night. *They never once told me that there was a problem with Mr McClure's furnishing of any information, of their physical surroundings or that they were being treated less than were appropriately in any way. The only conversation I had with Mr Maupin, other than just to say hello and good evening, was when he came by on Thursday of the third week that he had been there and he and Mr Robertson stood at my doorway. They did not come into the office. I was sitting at my desk and Mr Maupin said, 'Mr Keever, we're done and we're leaving', and I said 'Well, I*

thought we had an exit conference scheduled for 9.00 in the morning. I have it on the calendar' I still have it on my calendar. I have it in my room at the hotel, and he said well they were done and they had to leave, that they were going to leave. Bill McClure was not in the office. I think he was at the SOS medical with a sick child that day and so I came - they went ahead and left. Bill came back the next morning and I said, 'Bill, Paul and Jim Robertson have already gone', and he was shocked that they had left without attending the exit conference.

* * *

Q: *Mr Maupin left Thursday night?*

A: *Yes sir.*

Q: *Did he hand anything to you?*

A: *No sir.*

Q: *Any work papers to you?*

A: *No Sir.*

Q: *Did he leave any exceptions or any findings?*

A: *No sir. He did not say one word about findings.*

MR ARMOUR: Did he say whether or not he had completed his audit, to any one?To the best of my recollection, he said, 'We're done'. That's all he said, he didn't elaborate when he left.

* * *

[NORDELL SUBMISSIONS]

MR WALKER: Before we begin with Mr Hite, and I do want to be as short a time as possible as I can be with him, I want to speak a bit about narrowing the issues and trying to make this week go faster than it might go. We all set our minds to it over the weekend and gave a great deal of thought as to how we could narrow the issues and at this point of the arbitration.....put things aside, what really are the issues in this case.

The issue of fraud is one that I would like to discuss briefly. You'll recall the other day when I tried to define the issues of the case, I mentioned that fraud is one that we really don't have to get to in order to determine that there's been a default or that the forfeiture remedy is applicable. There have been...failure to pay cash calls. There have been defaults because Nordell's not got its proper share of the Pertamina payment.

Mr Armour, you asked us a while ago, you pointed out quite properly that when this arbitration was brought, there was not a specific claim relating to fraud and you asked us if we wanted to have the panel make a determination that there's been fraud on the part of Triton, we ought to file an amendment to the pleadings. We thought about that and we reviewed the bidding and we determined the course that most of the evidence which we think goes to the issue of fraud has come out just in the last several weeks during the course of this arbitration. I have in mind Mr Murphy's testimony and Mr Murphy's schedule, Exhibit No. 44, the KPMG report which indicates the cash calls were being paid. Journal entries, we got - and we're going to talk a little later about journal entries, the....of the journal entries, giving us about 20 per cent....and even in the ones that we got, as you'll see shortly, there's dramatic evidence of fraud. But since we've only begun to get the evidence of fraud, that process is not complete. Since it's not necessary to the final determination of this arbitration, we've decided that - another reason we're not ready to go forward with this is a lot of this is going to depend on testimony of Triton people who want us to implore we want Mr Tatum, we want Mr Gore, we want Mr Read. They are apparently not here, so it's not something that's going to be dealt with in this arbitration.

So my point is simply this. We have decided not to abandon our demand for arbitration. We are not going to ask the panel to make findings relating to fraud. We are going to leave that for another time and another place. It is not necessary for the panel's determination. *The same evidence that goes to fraud*

goes to the issues of breaches of contract, breaches of fiduciary duty. The same evidence is a basis for the remedy that we're going to ask for, so it's not necessary. So we're going to ask you to make a ruling at this time that the panel is not asked to determine whether Triton has engaged in fraudulent conduct, and that you're not making any such determination. I think that would narrow the issues in the case dramatically.

* * *

MR WALKER: I have no problem with the sealing of Mr Callaway's testimony and I can assure the panel and Mr Flegle that we have no intention of using Mr Callaway's testimony outside these arbitration precedence. Testimony should be transcribed, it was important testimony, should be part of Callaway's testimony, there is considerable doubt as to the validity of any invoices. Based on Mr Callaway's testimony, there is at least a possibility that the charges for rigs about which he testified were made to Nordell and there is at least the possibility that the double charging to those rigs took place at a time during the computation of the carry. There will be further testimony about this. *My point is simply, I have no problem with the sealing of it, I have no problem with assuring the panel that we are not going to use it except for purposes of this arbitration, but it should be transcribed and part of the records.*

With respect to Exhibit '90' [the Callaway memorandum], I feel the same way. You've indicated to us off the record - you think it would be a good idea for us to take that back. We will do that. I would prefer not to withdraw the exhibit, I mean, it's an important exhibit in this case. At the conclusion of the case, and after your decision has been reached, I agree you should give us back that exhibit and others and we will take steps to see that it is not ..in the way that it should not.

MR ARMOUR: Mr Flegle?

MR FLEGLE: I guess, Your Honour, my concern is what we have discussed informally, relating to the record. I would urge the panel to collect the costings of Exhibit '90' now, send them back to the accountants for Nordell for their keeping and ....documents have been - if we are going to transcribe Mr Callaway's testimony, only one copy to be made and that copy is handed to the panel.

MR ARMOUR: Yes, we only have one copy of the testimony and we have it. And that also, you will keep the exhibit.

* * *

MR ARMOUR: we intended to permit, any testimony or evidence to come into this case from the time it started till the time it ends. And whether it's oral or written, we've permitted it to come in and we think that we shouldn't vary from that procedure. There are a lot of accusations back and forth - you didn't do it, you didn't do this, or you said this or you said that. But I think we want to hear everything and see everything that pertains to the issues here and it's important. Now what weight we give to it, is another matter.

MR GRZANKA: Alright, I withdrew rule the objection before we broke.

MR ARMOUR: This is an arbitration proceeding and that's why you arbitrated. It's not a trial, it's not a criminal trial, and we think it's important to hear what every party has to say. Proceed please.

[Emphasis Supplied]